

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-5507-2021(O&M)
Date of decision:-5.2.2021**

M/s Auto Tech Engineering and another

...Petitioners

Versus

M/s Shri Mehandipur Balaji Enterprises

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Gurcharan Dass, Advocate
for the petitioners.

H.S. MADAAN, J.(ORAL)

Case taken up through video conferencing.

This petition under Section 482 Cr.P.C. has been directed against the order dated 20.1.2020 passed by Judicial Magistrate Ist Class, Ludhiana in Criminal Complaint No.COMA/0005568/2015 dated 15.5.2015 titled "M/s Shri Mehandipur Balaji Enterprises Versus M/s Auto Tech. Engineering and another" filed under Section 138 of Negotiable Instruments Act, 1881, vide which the trial Court had dismissed the application moved by petitioner/accused under Section 311 Cr.P.C. for recalling CW2 Gaurav Garg.

Briefly stated, the facts of the case, which are relevant for the purpose of decision of the present revision petition are that in a

complaint case CW2 Gaurav Garg had produced certificate under Section 65-B of Indian Evidence Act with regard to ledger entries, statement of account and invoices etc., which was exhibited as Ex.C7. He was not subjected to cross-examination. Subsequently, accused moved an application under Section 311 Cr.P.C. for permission to cross-examine CW2 Gaurav Garg with regard to certificate Ex.C7. However, that application was dismissed vide the impugned order. For ready reference, the relevant part of the order is being reproduced as under:

The complainant wants to recalling of CW2 or in the alternative DE-exhibition of Ex.C7 on the ground that CW2 has produced alleged certificate U/s 65-B of Indian Evidence Act with regard to the alleged ledger entries, alleged statement of account and alleged invoices and exhibited the same as Ex.C7 in the absence of accused as well as his counsel without facing the cross-examination to extract the truth with regard to above said ledger entries, alleged statement of account and alleged invoices and a wrong address has been given in the alleged invoice no.2 dated 3.4.2015 of the complainant firm as Shop No.3, Janta Nagar, Near Quality Dharam Kanda, Ludhiana whereas, no business was ever conducted by the complainant firm at the above said address. In this regard it is pertinent to mention here that CW2 has only tendered certificate u/s 65-B of Indian Evidence Act and he has not tendered any ledger or Account statement. CW2 already cross-examined at length by the defence. In view of this Court, application

cannot be allowed because the complainant want to fill the lacuna in the case which is not the object and intention behind Section 311 Cr.P.C. and not permissible under Section 311 Cr.P.C. It is correct that under Section 311 Cr.P.C. put obligation upon the Court to summon and examine and recall and re-examine a any witness where the evidence of such witness is essential for the just decision of the case. Further relief claimed is that in the alternative the above said document Ex.C7 be de-exhibited being out legally proved by the complainant. In this regard it is pertinent to mention here that mere exhibiting a document does not mean that it is admissible in evidence. The admissibility of document shall be scanned at the time of arguments. If at that time it comes on record that the document has not been exhibited as per provisions of law or have not been proved as per the provisions of Indian Evidence Act, then the same will not be read into as evidence. Moreover, no provision of law provides for de-exhibition of document already exhibited in the evidence. Therefore, inj light of the facts and circumstances of the present case and averments made in the application, this Court finds the present application without merits and liable to be dismissed. Allowing such kinds of applications will flood open the gates for similar kind of applications in each and every case, which will ultimately become abuse of process of law. Hence, in view of all the discussion made

above, this Court finds the present application nothing but an abuse of process of law. Hence, the same is hereby dismissed.

Such order is being challenged in the present revision petition.

I have heard learned counsel for the petitioner besides going through the record and I find that there is no merit in the present petition.

A perusal of the interim order reproduced by the petitioner himself in this petition goes to show that certificate in question had been tendered by CW2 Gaurav Garg as per application under Section 311 Cr.PD.C.. The document was exhibited on 30.7.2019. The case was adjourned to 20.8.2019 for arguments. The presence of accused along with counsel Sh.J.K. Arora, Advocate is marked in order dated 30.7.2019. If the accused wanted to raise any objection with regard to admissibility of the document, the same should have been done when it was tendered into evidence and exhibited. Furthermore, if accused wanted to cross-examine the witness with regard to the document, a request in that regard should have been made to the Court at that very time but nothing of that sort was done and thereafter an application for recalling of CW2 Gaurav Garg was filed, which was rightly dismissed by the trial Court. The trial Court has clearly observed that the admissibility of the documents shall be seen at the time of the arguments and if at that time it comes out that the document has not been exhibited as per provisions of law or has not been proved in terms of Indian

Evidence Act, then the same shall not be read into evidence. In any case there is no provision under law for de-exhibition of the document, which has already been exhibited in evidence. The trial Magistrate has been very fair with both the parties as a perusal of the impugned order goes to show. The rights of the petitioner are adequately protected and no prejudice is going to be caused to him by dismissal of his application under Section 311 Cr.P.C. since the petitioner has got an opportunity of raising objection with regard to admissibility of the document at the time of final arguments and if the accused is successful in showing to the Court that the document has not been proved in accordance with law, then the same may not be taken into consideration.

Learned counsel for the petitioner has referred to authority *Anvar P.V. Versus P.K. Basheer and others, 2015(1) LAR 225* in support of his contention that the impugned order deserves to be set aside. But this authority does not find application to the present case due to different facts and circumstances and the context in which such observations have been made.

Finding no merits in the petition, the same stands dismissed.

5.2.2021
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No