

(117) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10937-2020
Date of Decision: 24.08.2022

Amit Sukhija

... petitioner

Versus

Pritpal Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Lovish Arora, Advocate
for the petitioner.

Mr. Ashish Gupta, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 14.02.2020 (Annexure P-6) passed by the learned Judicial Magistrate, 1st Class, Faridkot, in complaint case titled as Pritpal Singh Versus Amit Sukhija bearing NACT No.487 of 2018 dated 12.06.2018 (Annexure P-3) pending in the Court of Judicial Magistrate, 1st Class, Faridkot, vide which the application filed by the petitioner under Section 91 Cr.P.C. has been dismissed.

2. The brief facts leading to the filing of the present petition are that the petitioner/accused received a legal notice dated 22.05.2018 (Annexure P-1) issued on behalf of the respondent/complainant under Section 138 of the Negotiable Instruments Act. It was stated in the notice that on 10.01.2018, the petitioner had borrowed a sum of Rs.6,50,000/- in cash

for domestic needs from the respondent as a friendly loan and had also agreed to pay interest @ 1% per month. It was further stated in the notice that on 15.05.2018, the respondent demanded the said amount and the petitioner in discharge of his liability issued a cheque bearing No.017494 dated 15.05.2018 for Rs.6,50,000/- from his account in IDBI Bank, Branch Faridkot in favour of the respondent. It was further stated in the notice that the respondent presented the cheque for encashment in his account, but the same was returned with the remarks "Funds Insufficient".

3. On receipt of the notice (Annexure P-1), the petitioner submitted a reply dated 25.05.2018 through his counsel. It was categorically stated in the reply that the petitioner had no dealing with Pritpal Singh, who is not known to him (i.e. complainant) and the cheque appears to be forged, while getting the same from one Raj Kumar. It was requested in the reply to supply a coloured photocopy of the said cheque or permit inspection of the original cheque.

4. Thereafter, the respondent filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. Vide order dated 17.07.2018, the petitioner was ordered to be summoned to face trial for an offence punishable under Section 138 of the Negotiable Instruments Act. On 17.10.2018, the petitioner appeared before JMJC, Faridkot and he was released on bail.

5. In order to prove its case, the respondent himself appeared in the witness box as CW-1 and further examined Vicky as CW-2 and Ravinder Singh as CW-3. The respondent produced the cheque as Ex.C-1, return memo

as Ex.C-2, legal notice as Ex.C-3, receipt as Ex.C-4 and acknowledgement as Ex.C-5.

6. On 17.01.2020, the petitioner filed an application under Section 91 of Cr.P.C. to direct the Mobile Telecommunication Companies to produce the call details of Mobile No.98723-19401 and Mobile No.98729-17565 of Airtel Company and Mobile No.98144-59437 of Idea Company and also of Mobile No.70090-60265 of Reliance Jio Company with record showing in whose name the said numbers were registered for the period 18.08.2018 to 15.01.2020. It was stated in the application that Raj Kumar @ Hira was running the business of committees and was having two blank cheques, one of Krishan Lal father of the petitioner/accused and another of accused Amit Sukhija as security with him in respect of the said committee, in which he was also made one of the members. The said Raj Kumar @ Hira had misused the said blank signed cheques and after fabricating the same one in the name of his brother Kimti Lal and another in the name of Pritpal Singh who is revealed to be his friend, two different criminal complaints on the basis of said two forged and fabricated cheques had been got filed through his brother Kimti Lal and the other from Pritpal Singh. It is further averred that one pronote and receipt had also been forged and fabricated alleged to be executed by Krishan Lal in favour of Kimti Lal in which the witness has been shown as Raj Kumar @ Hira, who is the brother of Kimti Lal and the other witness is Vicky Bansal. To prove the said fact that it is Raj Kumar @ Hira who is instrumental in fabricating the cheques and getting filed the complaints and to prove the fact that he was advising to pursue the

complaint, it was felt necessary to summon, the call details as mentioned in the application, so that it may be proved that it is Raj Kumar @ Hira, who was actually pursuing the cases through the said complainant, with whom the accused and his father had no dealing of any kind.

7. The application filed by the petitioner under Section 91 of Cr.P.C. came to be dismissed by the Judicial Magistrate, 1st Class, Faridkot vide order dated 14.02.2020 (Annexure P-6) by holding that from the call details it could not be revealed that Raj Kumar @ Hira was pursuing the complaint through Pritpal Singh complainant. It was further held that the application has been filed just to delay the proceedings. It is this order which has been assailed in this petition.

8. The learned counsel for the petitioner contends that if the call details as sought in the application are produced, then the petitioner/accused would be in a better position to establish that the *de facto* complainant was Raj Kumar @ Hira and not Pritpal Singh-respondent. He contends that there was no assumption that every application under Section 91 Cr.P.C. had been filed to delay proceedings. In terms of the judgment of the Hon'ble Supreme Court in **T. Nagappa Versus Y.R. Muralidhar, 2008(3) R.C.R. (Criminal) 926**, what should be the nature of defence evidence sought to be produced is not a matter which should be left only to the discretion of the Court. It was for the accused to prove his defence in the manner that he thinks fit. The Court could not prejudge the evidentiary value of defence evidence sought to be produced. That would be a matter to be adjudicated during trial and not at the stage of deciding of an application under Section 91 Cr.P.C. It has not

been held in the impugned order that the production of documents which sought was irrelevant or not essential for the just decision of the case. In fact, no prejudice would be caused to the respondent/complainant, if the evidence sought to be produced by the petitioner was allowed as he would have ample opportunity to cross-examine the witness with respect to the record produced.

9. On the other hand, the learned counsel for the complainant-respondent contends that the application has been filed just for the purposes of delaying proceedings. Even, if it was established that the complainant-respondent-Pritpal Singh was in contact with Raj Kumar @ Hira (the *de facto* complainant as per the petitioner/accused) even then it was not sufficient to establish that Raj Kumar @ Hira was in fact pursuing the present complaint through Pritpal Singh as it is quite possible that they enjoyed friendly relations. He thus, contends that the impugned order had rightly been passed.

10. I have heard the learned counsel for the parties at length.

11. Before proceeding further, it would be apposite to examine Section 91 of the Cr.P.C., reads as under:-

“91. Summons to produce document or other thing.-

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce

it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

12. The Hon'ble Supreme Court in the case of **T. Nagappa's** (supra), it was held as under:-

*“8. What should be the nature of evidence is not a matter which should be left only to the discretion of the Court. It is the accused who knows how to prove his defence. It is true that the court being the master of the proceedings must determine as to whether the application filed by the accused in terms of sub-section (2) of **Section 243** of the Code is bonafide or not or whether thereby he intends to bring on record a relevant material. But ordinarily an accused should be allowed to approach the court for obtaining its assistance with regard to summoning of witnesses etc. If permitted to do so, steps therefor, however, must be taken within a limited time. There cannot be any doubt whatsoever that the accused should not be allowed to unnecessarily protracting the trial or summon witnesses whose evidence would not be at all relevant.”*

[Emphasis supplied]

13. A perusal of the judgment in *T. Nagappa* case (supra) clearly establishes that it was the accused who knew how best to prove his defence. Ordinarily, the accused should be allowed to approach the Court for obtaining its assistance with regard to summoning of witnesses. Undoubtedly, the accused should not be allowed to unnecessarily protract the trial or summon witnesses whose evidence would not be at all relevant. In the present case, it is the consistent stand of the petitioner/accused right from the very inception of proceedings that Pritpal Singh *de jure* complainant/respondent was unknown to him. In fact, the cheque had been given to one Raj Kumar @ Hira who was in the committee business and he has used Pritpal Singh to get the said cheque dishonoured leading to the filing of the instant complaint. A perusal of Annexure P-2 i.e. reply to the legal notice clearly sets out the defence of the petitioner/accused. Therefore, it cannot be said that the application under Section 91 Cr.P.C. has been moved only to delay proceedings. If the production of the documents/call detail records are permitted as per the application under Section 91 Cr.P.C., the effect of such documents/call detail records would undoubtedly be a matter of adjudication during trial. The Trial Court would decide as to the evidentiary value, if any of the said documents. At this stage, it cannot be said that the production of the said documents are completely irrelevant. Therefore, it has rightly been contended by the petitioner that at the stage of deciding this application under Section 91 Cr.P.C., the Court could not

prejudge the evidentiary value of defence evidence sought to be produced and dismiss the application.

14. In view of the fact as noticed above, that the very basis of the entire case of the petitioner/accused is that the said cheque had been given to Raj Kumar @ Hira, who has misused the same, the petitioner/accused must be given an opportunity to lead his defence in the manner that he thinks fit.

15. Keeping in view the aforesaid discussion, I find merit in the present petition and the impugned order dated 14.02.2020 (Annexure P-6) passed by the learned Judicial Magistrate, 1st Class, Faridkot is hereby quashed. The prayer of the petitioner is accepted in terms of his application (Annexure P-4).

16. The Trial Court is directed to conclude the trial within a period of 06 months from the next date fixed before it.

(JASJIT SINGH BEDI)
JUDGE

24.08.2022

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No