

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-30884-2018

Date of Decision: 10.11.2022

Vasudev

.... Petitioner

Versus

Dharmender Kumar

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Sandeep Kumar, Advocate for
Mr. Vikram Singh, Advocate for the petitioner.

Mr. Govind Tanwar, Advocate for
Mr. Kanwal Goyal, Advocate for the respondent.

ASHOK KUMAR VERMA, J. (ORAL)

1. Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the order dated 05.07.2018 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Mahendergarh, in Criminal Complaint No. RT-151 dated 16.01.2015 titled 'Vasudev Vs. Dharminder Kumar', filed under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as-'the Act') whereby the application dated 05.05.2018 (Annexure P-1) filed by the petitioner under Sections 65 and 66 of the Indian Evidence Act, 1872 for not considering the documents in question as Ex. DW-2/A (Annexure P-2) was dismissed, on the ground that the objection of the petitioner qua the same controversy is noted down in the examination of DW-2 as "objected to" and the said question

was left open to be decided at the time of final hearing.

2. Briefly, respondent-Dharmender Kumar, issued a cheque No. 055934, dated 05.11.2014 amounting to Rs.5,00,000/- of Sarv Haryana Gramin Bank, Branch Shopping Complex, Mahendergarh in favour of the petitioner on account of discharging his financial liability. On presentation, the said cheque was dishonoured vide memo dated 08.11.2014 with remarks 'insufficient balance'. Thereafter, the petitioner served a legal notice dated 05.12.2014 upon the respondent and subsequently filed complaint under Section 138 of the Act on 16.01.2015. In defence evidence, the respondent examined Sh. Ravi Kumar, Assistant Manager, Sarv Haryana Gramin Bank as DW-2, who tendered in evidence a photocopy of letter (Annexure P-2) as Ex. DW-2/A upon which the petitioner had raised objection on the ground that the said document is a photocopy and not original, therefore, the same cannot be exhibited. Thereafter, the petitioner moved an application dated 05.05.2018 (Annexure P-1) for not considering the document as Ex. DW-2/A without the original record which was dismissed by the trial Court vide impugned order dated 05.07.2018 (Annexure P-3) on the ground that the objection of the petitioner qua the same controversy was noted down in the examination of DW-2 as "objected to" and the said question was left open to be decided at the time of final hearing. Hence, the present petition.

3. Learned counsel for the petitioner *inter alia* contends that the objection regarding the admissibility of the document in question raised

by the petitioner should have been decided by the trial Court at the stage of admission itself, instead of leaving it open to be decided at the time of final hearing. He further contends that in case, the objection is left open till the final decision of the case, the petitioner shall not be able to address arguments qua this document in the absence of final decision qua its admissibility. In support of his contentions, learned counsel for the petitioner has relied upon judgments in **(i) *Javer Chand vs. Pukhraj Surana*, 1961 AIR (SC) 1655; (ii) *Shalimar Chemical Works Ltd. vs. Surender Oil and Dal Mills (Refineries) and others*, 2010(8) SCC 423; (iii) *Suernder Bala vs. M/s Sandeep Foam Industries P. Ltd.* 2000(2) RCR (Rent) 28 and (iv) *Sahil Kumari vs. Saraswati Devi*, 96 (2002) DLT 131.**

4. On the other hand, controverting the arguments raised by learned counsel for the petitioner, learned counsel for the respondent contends that the question regarding admissibility of the document Ex. DW-2/A being the photocopy has been kept open by the trial Court which would be decided at the time of final arguments. The application dated 05.05.2018 (Annexure P-1) has rightly been dismissed by the trial Court as the same has been filed only to delay the proceedings. In support of his contentions, learned counsel for the respondent has relied upon a judgment passed by the High Court of Orissa at Cuttak in ***C.M.P. No. 530 of 2022***, titled as ***Babita Satpaty @ Mishra vs. Sitanshu Kumar Dash and others***, decided on 03.08.2022.

5. I have heard learned Counsel for the parties and gone

through the relevant record.

6. Perusal of the impugned order shows that in defence evidence, the respondent examined Sh. Ravi Kumar, Assistant Manager, Sarv Haryana Gramin Bank as DW-2, who tendered in evidence a photocopy of letter dated 09.12.2013 (Annexure P-2) as Ex. DW-2/A upon which the petitioner had raised objection qua its admissibility as the said document is a photocopy and not the original. The trial Court after hearing the parties dismissed the said application moved by the petitioner raising the said objection vide impugned order dated 05.07.2018 (Annexure P-3) observing that the case is at the final stage of defence evidence, if any, and arguments and no prejudice is going to be caused to the applicant-petitioner because the objection of the petitioner regarding admissibility of the document in question was kept open to be decided at the time of final arguments. Further, once a document has been exhibited with objection, the same cannot be expunged from the evidence of the party unless circumstances thereto are established. In the instant case, the issue raised by the petitioner is not a ground to expunge a document already marked as exhibit. Hence, the impugned order warrants no interference.

7. More so, the Hon'ble Supreme Court in ***Bipin Shanti Lal Panchal vs. State of Gujarat and another, (2001) 3 SCC 1***, has held that *such practices when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must recast and remoulded to give way for better substitutes which would*

help acceleration of trial proceedings.

8. In view of the above, I find no infirmity in the impugned order dated 05.07.2018 (Annexure P-3). The instant petition being meritless is dismissed.

November 10, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No