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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-35634-2022 (O&M)

Date of decision: 10.11.2022

Mohan Lal Gupta

... Petitioner

Vs.

Ashwani Narang

.. Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Navmohit Singh, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of the order dated 25.04.2022 passed by the trial Court in a complaint bearing CIS No.554 of 2017 dated 24.05.2017 filed under Section 138 of Negotiable Instruments Act, vide which application filed by the respondent for leading secondary evidence i.e. copy of compromise deed, was allowed.

Learned counsel for the petitioner submits that in a similar case i.e. CRM-M-35318-2022 filed by Usha Gupta, wife of the present petitioner, following order has been passed by this Court on 09.08.2022: -

“The complainant-petitioner herein constituted, a complaint under Section 138 of the Negotiable Instruments Act, before the learned trial Magistrate concerned. The above complaint has

progressed to the stage of recording of the deposition of the complainant's evidence, but subsequently, the accused moved an application cast, under Section 66 of the Indian Evidence Act (hereinafter referred to as "the Act"), provisions whereof stands extracted hereinafter, seeking leave to adduce secondary evidence, in respect of a compromise drawn amongst the concerned.

“66. Rules as to notice to produce.—Secondary evidence of the contents of the documents referred to in section 65, clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, or to his attorney or pleader,] such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case:

Provided that such notice shall not be required in order to render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it: —

- (1) when the document to be proved is itself a notice;*
- (2) when, from the nature of the case, the adverse party must know that he will be required to produce it;*
- (3) when it appears or is proved that the adverse party has obtained possession of the original by fraud or force;*

(4) when the adverse party or his agent has the original in Court;

(5) when the adverse party or his agent has admitted the loss of the document;

(6) when the person in possession of the document is out of reach of, or not subject to, the process of the Court.”

2. On the basis of the said compromise, the accused was making an attempt to adduce evidence in rebuttal to the apposite statutory presumption, invested in the holder in due course of the negotiable instrument, who is the complainant-petitioner herein.

3. The learned counsel for the petitioner submits that, the learned Judicial Magistrate concerned, has travelled beyond the domain of the empowerment vested in him, under Section 65 of the Act, inasmuch as, the leave granted through the impugned order to the accused, to produce photocopy of the compromise, rather was required in terms of Section 66 of the Act, to be preceded by a statutory notice becoming issued, upon the person concerned, who was holding its custody, and, who yet despite service of notice was not producing it.

4. The above made argument becomes rested, upon Section 66 of the Act, provisions whereof stands extracted hereinabove.

5. Though, the learned counsel for the petitioner, has made

a valid argument before this Court, that unless preceding the application, at hand becoming instituted by the accused, before the learned trial Judge concerned, there was an imperative statutory requirement of notice being served, upon the person concerned, in whose possession the relevant document was, at the relevant time, and, only upon his refusing to produce it, rather the apposite application was maintainable, but the above submission yet becomes scuttled. The reason becomes anchored, upon the factum, that he has not understood the import of the coinage “such notice to produce it, as prescribed by law, and, if no notice was prescribed by law”, “then such notice as the Court considers reasonable under the circumstance of the case”. The import, thereof, is that, the requirement of issuance of a prior notice to the concerned, to produce it, arises only when the issuance of such notice “is prescribed by law”. But if no notice is prescribed by law to be issued, upon the person concerned, in whose custody the relevant document is, thereupon, only “such notice to the concerned, as the Court considers reasonable under the circumstances of the case”, rather is required to be issued. Therefore, it has to be determined whether in respect of criminal proceedings rather there is any specific procedure or any rule necessitating the issuance of a prior notice upon the person

concerned, to produce, the document, in whose custody rather the said document is, rather for thereafter, any apt reliance being made qua the mandate of Section 65 of the Act. However, a reading of the provisions of Cr.P.C., does not reveal that, therein there is any prescription, that in respect of criminal proceedings drawn against accused concerned, there is any necessity of any prior notice to produce a document, being amenable to be issued, upon the person concerned, as a prerequisite, for the leave, under Section 65 of the Act, hence being asked for, and/or, it becoming granted.

6. Contrarily it is only in the relevant provision(s), of the C.P.C., that there a procedure becomes engrafted relating to the issuance of notice(s) or qua interrogatories, inspection, and, discoveries, being made upon the person, in whose custody the relevant document rather is. Therefore, it is only in respect of civil proceedings, that “there is prescription in law for a notice being issued, upon the person concerned”, and, if so, it is only in civil proceedings that a prior notice is required to be given to the person concerned, and, as a pre-requisite for the leave under Section 65 of the Act being asked for. However, when in respect of criminal proceedings, there is no prescription for a prior notice,

being served, upon the person concerned, qua production of the original document, thereupon there was no necessity, for the issuance of a prior notice to the person concerned, to produce it, rather the notice as issued, upon the complaint, upon the accused's application, cast under Section 66 of the Act, "was a sufficient, and, reasonable notice" rather for the relevant purpose.

7. Consequently, the above argument is rejected.

8. However, since there is only an order of production qua the photocopy of the original compromise, hence as secondary evidence, in proof of the original of the compromise, but yet when it has not become tendered by the accused before the learned trial Judge concerned. Consequently all rights are yet reserved to the petitioner-complainant to raise a contest, not only with respect to the authenticity thereof, but also with respect to forgery of signatures of the signatories concerned, besides also to raise a contest, that the leaves in the photocopy of the original have been untenably altered or changed from the ones in the original.

9. In case, the above objections are raised, and, are contested, thereupon, the learned trial Judge concerned, shall at the relevant stage, draw lawful orders thereons."

Learned counsel submits that present petition may also be disposed of in terms of the aforesaid order.

Disposed of, accordingly.

10.11.2022
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No