

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

**CRM-M No.39908 of 2022
Date of Decision: 12.09.2022**

Ajay DahiyaPetitioner

Versus

Virender MalikRespondent

BEFORE: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Rajesh Lamba, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.(Oral)

Feeling dissatisfied with and aggrieved by the order dated 10.06.2022 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Sonipat (for short 'the trial Court) in the Complaint Case bearing No. COMA/1186/2016, partly allowing the application moved by the respondent-complainant (here-in-after to be referred as 'the complainant'), under Section 311 Cr.P.C as well as the judgment dated 03.08.2022 (Annexure P-5) handed down by learned Additional Sessions Judge, Sonipat (for short 'the revisional Court'), whereby the revision petition filed by the petitioner-accused (here-in-after to be referred as 'the accused') to lay challenge to the order Annexure P-3 has been dismissed, the accused has preferred the instant petition for seeking the quashing of the afore-said order and the judgment as well.

2. Bereft of unnecessary details, the facts culminating in the filing of the present petition, are that the complainant filed the above-said complaint case against the accused under Section 138 of the Negotiable Instruments Act, 1881 (here-in-after to be referred as 'the N.I.Act'). During the course of the trial therein, the complainant had moved the application Annexure P-1 under Section 311 Cr.P.C for seeking permission to lead the additional evidence by way of examining Mr. Sunil Verma, Advocate, as his witness, so as to exhibit the copy of the legal notice dated 15.09.2016 on the record. Vide order Annexure P-3, the trial Court partly allowed the said application while permitting the complainant to only exhibit the afore-said legal notice. The accused challenged the above-said order by filing the revision petition and the same has been dismissed by the revisional Court vide the impugned judgment Annexure P-5.

3. I have heard learned counsel for the petitioner-accused in this petition, at the preliminary stage and have also perused the file carefully.

4. Learned counsel for the petitioner-accused contends that the application Annexure P-1 is a belated one and the legal notice intended to be proved on the record, had been got issued to the accused by the complainant before filing the afore-said complaint case and thus, he was fully aware about the same while leading his evidence but he failed to get it proved at that time and now, vide the impugned order Annexure P-3, the trial Court has wrongly allowed him to fill up the lacunae in his case and the revisional Court has also erroneously upheld the said order vide the judgment Annexure P-5 and in these circumstances, the impugned order as

well as the judgment are not legally sustainable and hence, the same deserve to be quashed.

5. However, I do not find the above-raised contention to be tenable at all because Section 311 Cr.P.C provides for summoning and examining any witness if it appears to the Court concerned that the same would be essential for the just decision of the case. Concededly, the issuance of the legal notice to the proposed accused, is a pre-condition for filing the complaint under Section 138 of the N.I Act and it being so, the said legal notice would be necessary and material for the purpose of the proper and effective adjudication of the said complaint case. Moreover, the trial Court has categorically observed in the impugned order Annexure P-3 that during the cross-examination of the complainant, the accused had relied upon a portion of the said legal notice, meaning thereby that the complainant does not want to produce any fresh document/material in his additional evidence that may adversely affect the defence of the accused.

6. As a sequel to the fore-going discussion, it follows that the present petition, being devoid of any merit, deserves dismissal. Resultantly, the same stands dismissed accordingly.

September 12, 2022

pooja

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

No