

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49842-2021 (O&M)

Reserved on: 29.08.2022

Pronounced on: 16.09.2022

Narinder Mohan

..... Petitioner

versus

Jaspal Kaur

..... Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Baldev Singh Sodhi, Advocate
for the petitioner.

Mr. Kanwaljeet Singh, Advocate and
Mr. Satvir Singh, Advocate
for the respondent.

PANKAJ JAIN, J.

By way of present petition under Section 482 Criminal Procedure Code (hereinafter referred to 'Code'), challenge has been laid to order dated 10.09.2021 passed by JMIC, Ludhiana (Annexure P-3), whereby application filed by the petitioner under Section 311 of the Code to lead additional evidence has been rejected.

2. Shorn of the details the necessary facts that need to be noted for the adjudication of the present petition are that the petitioner herein is a complainant before the trial Court. A complaint was filed by him against the respondent for offence punishable under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'N.I. Act').

3. As per the complaint, the petitioner extended friendly loan of Rs.3 lacs to the accused-respondent. In order to discharge her legal liability to repay the said friendly loan, accused issued the cheque in dispute to the petitioner. However, the said cheque dated 04.12.2017 was dishonoured for insufficient funds on 06.12.2017. Consequently, the complaint in question was filed. Respondent was summoned to face trial.

4. After the parties had concluded their evidence, application under Section 311 of the Code was filed whereby, the petitioner sought permission to place on record agreement to sell dated 03.03.2017. The application was contested by the respondent. Trial Court vide impugned order dated 10.09.2021, dismissed the application filed by the petitioner holding that the same was not bonafide and maintainable at the fag end of the trial. The petitioner thereafter filed revision petition against the said order before the Sessions Judge, Ludhiana. The same was withdrawn vide order dated 14.10.2021 (Annexure P-4). The petitioner is now before this Court invoking jurisdiction of this Court under Section 482 of the Code.

5. Counsel for the petitioner submits that the trial Court ought not have dismissed the application holding that it was not maintainable at this belated stage. He claims that the said finding recorded by the trial Court is against the bare provision as contained in Section 311 of the Code. He further claims that the document in form of agreement to sell sought to be produced by way of application, is necessary for the proper adjudication of the complaint. He further claims that in fact in his defence evidence, the accused relied upon bank statements to show that sum of Rs.4 lacs was to be paid to the complainant, his son and daughter-in-law. However, the said amount was on account of the agreement to sell which he now wants to place on record. He further claims that it was the

earnest money received owing to this agreement to sell which was returned as the deal could not fructify because the property which accused agreed to sell to the petitioner was not free from incumbrance.

6. Per contra, counsel for the respondent submits that the application has been moved by the petitioner only to fill up the loopholes. As per settled law, Section 311 of the Code cannot be resorted to fill the lacunas. He relies upon the answer given by the accused at the time of service of notice of acquisition wherein it was stated that:-

“Q. What is your plea of defence?

A. I am innocent. I have been falsely implicated in the present complaint. The present complaint is false and frivolous. I have no legal liability towards the present cheque. I have obtained the friendly loan from the complainant in the year 2015 Rs.3 lakh and the same was returned by the accused amount of Rs.4 lakh along-with interest in the year 2017 by me to the complainant and his son and her daughter-in-law through bank/cheque No.555817 dated 15.03.2017 amount of Rs.1 Lakh to the complainant and on dated 14.03.2017 Cheque No.555811 amount of Rs.1 lakh to the complainant and cheque No.555813 dated 14.03.2017 amount of Rs.1 Lakh in the name of Amit Kumar whom son of complainant and same 10.03.2017 in the name of Meenakshi whom daughter-in-law of complainant amount of Rs.1 Lakh through voucher in her account. That the cheque in question same was taken by the complainant as a security cheque when I take the loan in the year 2015 and the complainant misused my security cheque. I have never issued the alleged cheque to the complainant. I want to cross-examine the complainant and complainant witness's through my counsel and I want to contest my case.”

7. He thus submits that the defence of the respondent was always in the knowledge of the complainant and thus the plea w.r.t. coming to the knowledge of the complainant of the fact regarding return of Rs.4 lacs is fallacious. He further refers to the cross examination of the complainant wherein he was specifically questioned regarding execution of any writing w.r.t. sale consideration of agreement to sell which he specifically denied. He thus submits that in the light of the said answer given by the complainant during cross-examination, the existence of the alleged agreement to sell itself is under cloud and thus the trial Court rightly declined the application filed by the complainant.

8. I have heard counsel for the parties and have carefully gone through the records of the case.

9. In the considered opinion of this Court, the impugned order is erroneous to the extent that the application has been dismissed by the trial Court holding that the same was not maintainable at the fag end of the trial.

10. Section 311 of the Code reads as under:-

“Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

11. As per bare provision of law power vested under Section 311 of the Code can be exercised at any stage of the trial. The only test prescribed as per settled law as to whether such evidence which is being sought to be produced by

resorting to Section 311 of the Code is essential to the just decision of the case or not. Reliance can be placed upon *Mohanlal Shamji Soni vs. Union of India (1991) Cr LJ 152 (SC)*. Trial Court has not given any finding as to whether the evidence which is being sought to be produced is essential for just decision of the case or not.

12. Resultantly, impugned order dated 10.09.2021 passed by JMIC, Ludhiana (Annexure P-3) is set aside. The present petition stands disposed off. The trial Court is directed to decide the application afresh by testing the application on the touchstone of 'whether the evidence sought to be produced is essential for the just decision of the case or not'.

13. Ordered accordingly.

14. Since the main appeal has been decided, the pending criminal miscellaneous application, if any, also stands disposed off.

(PANKAJ JAIN)
JUDGE

16.09.2022

Dinesh

Whether speaking/reasoned Yes

Whether Reportable : Yes