

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-50790-2022

Date of decision: 17.11.2022

Prabhsharan Singh

.....Petitioner

 V/s

Jassa Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Naveen Bawa, Advocate
for the petitioner.

DEEPAK MANCHANDA J.

This petition has been filed under Section 482 Cr.P.C. with the prayer for quashing of the impugned order dated 15.09.2022 (Annexure P-5) vide which the trial Court dismissed the application of the petitioner for production of documents under Section 91 Cr.P.C. which was filed in complaint under Section 138 of Negotiable Instruments Act, 1881 in case No.NACT-3327/2019 titled as Jassa Singh Vs. Prabhsharan Singh.

Learned counsel for the petitioner contends that the application under Section 91 Cr.P.C. was filed with the prayer for production of the PAN Card of the respondent on record as the Income Tax Department requires copy of PAN card to produce the ITR of the complainant hence, the necessity arose to file the said application which was essential for the adjudication of the complaint pending before the trial Court under Section 138 of the Negotiable Instruments Act but the same was dismissed.

I have heard learned counsel for the petitioner.

A perusal of the impugned order dated 15.09.2022 reveals that during cross examination of respondent-complainant which was deferred for proving the original sale deed and same was produced on 02.05.2022, further in the cross-examination the defence counsel put question regarding income tax but petitioner never requested for deferring the cross examination on the said ground nor the question with regard to providing PAN card was put to him. It is also mentioned in the said order that respondent-complainant stated in his cross-examination that he did not mention any loan amount in any ITR. Also, even in the statement recorded under Section 313 Cr.P.C, he has stated that respondent/complainant has misused the cheque of accused and that money transaction allegedly shown with him is a sale consideration as the respondent/complainant purchased agricultural land from him and the alleged application was only filed to prolong the litigation, accordingly the same was dismissed.

At this stage, it would be appropriate to take note of the provisions contained in Section 91 of the Code which provides 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.”

This Court has observed in *Om Parkash Sharma V. CBI, (2000) 5 SCC 679* and the relevant portion of the same is reproduced hereinbelow:-

“28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the Court in the context of the purpose—investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

It is settled law that the accused cannot ordinarily invoke Section 91 Cr.P.C. However, the Court being under the obligation to impart justice and to uphold the law is not debarred from exercising its power, if the interest of justice in a given case so requires, even if the accused may have no right to invoke Section 91 Cr.P.C. To exercise this power, the Court is to be satisfied that the material available has a crucial bearing on the issue. The trial Court had power to order and to produce the document if the same was necessary or desirable for the purpose of trial or other proceedings under the Code but the first and foremost requirement of the Section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer has been made for production. If any, document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage would not arise since defence of the accused is not relevant at that stage. Moreover, for summoning of production of documents as may be necessary at any of the stages mentioned in Section 91, the same is to be examined considering the stage when such a prayer for summoning the production is made and the party who makes it.

Accordingly, keeping in view the above, the trial Court is justified in rejecting the application of the petitioner for production of documents at the prolonged stage of trial.

As a fallout and consequence of the aforesaid discussion, I do not find any merit in the present petition filed under Section 482 of Code. Resultantly, the same is hereby dismissed in limine.

17.11.2022
Ajay Goswami/Sapna

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No