

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-16491-2017

Date of Decision: 18.11.2022

Inderjit Singh

.... Petitioner

Versus

Manoj Dhawan

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Vishal Sharma, Advocate for the petitioner.

Mr. Pardhuman Yadav, Advocate for the respondent.

ASHOK KUMAR VERMA, J. (ORAL)

1. By way of filing this petition under Section 482 Cr.P.C., the petitioner has laid challenge to the order dated dated 18.01.2017 (Annexure P-3) passed by the learned Sub Divisional Judicial Magistrate, Dera Bassi, vide which the application filed by the petitioner to cross-examine the complainant, was dismissed.

2. Brief facts of the present case are that complainant/respondent-Manoj Dhawan, came into contact with the petitioner through a common friend, namely, Sukhbir Singh. The petitioner asked the complainant-respondent to invest in a business of mining of sand to which he agreed and had paid a sum of ₹10,00,000/- in the month of September, 2011, but no contract was given to him despite the assurance given by the petitioner. In order to discharge his liability, the petitioner had issued a post dated cheque bearing No. 268326 dated 25.04.2016,

for a sum of ₹10,00,000/- in November, 2015, which on presentation was returned with remarks “Funds Insufficient” vide memo dated 12.07.2016. The complainant served a legal notice dated 26.07.2016, upon the petitioner and thereafter, filed a complaint (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act'). After summoning, the petitioner appeared before the trial Court and filed an application dated 18.01.2017 (Annexure P-2) seeking permission to cross-examine the respondent-complainant which was dismissed by the trial Court vide impugned order dated 18.01.2017 (Annexure P-3). Hence, the present petition.

3. Learned counsel for the petitioner *inter alia* submits that the trial Court has wrongly dismissed the application of the petitioner merely on the ground that he has admitted his signatures on the cheque in question and can prove his defence plea by leading evidence in defence. The petitioner being an accused has the right to cross-examine the complainant. He further submits that as per the provisions of Section 145 of the Act, the Court has no other option but to summon and examine a witness including the complainant who has affirmed an affidavit in support of his statement. In support of his submissions, learned counsel for the petitioner has relied upon judgments in ***Radhey Shyam Garg vs. Naresh Kumar Gupta, 2009 (13) SCC 201*** and ***Rajesh Aggarwal vs. State and another, 2010 (4) RCR (Criminal) 124.***

4. On the other hand, while refuting the above submissions of learned counsel for the petitioner, learned counsel for the respondent-complainant submits that the petitioner-accused has admitted his

signatures on the cheque in question. The petitioner has no right to cross-examine the respondent-complainant merely on the ground that during recording of pre-charge evidence he was not present at that time. The petitioner can prove his plea by leading defence evidence.

5. I have heard learned counsel for the parties and carefully gone through the relevant record.

6. Before advertng to further, it would be appropriate to reproduce provisions of Section 145 of the N.I. Act which read as under:-

“145. Evidence on affidavit. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions, be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

7. A bare perusal of the aforesaid provision makes it abundantly clear that the legislature has allowed the complainant to give his evidence by way of an affidavit during the course of trial in respect of offence punishable under Section 138 of the Act, by virtue of Section 145 (1) of the Act. Section 145(2) of the Act mandates that the Trial Court may, on the application moved by the accused, summon the complainant for his cross-examination as to the effect contained therein. Section 145 of the Act, which seeks to attend a constructive purpose, should be read rationally. The purports and objects of the Act are for a fast and expeditious trial which is even otherwise a requisite condition for a criminal trial. It is needless to mention here that the Act is a special legislation and the provisions contained in a special statute have

overriding effect over the provisions contained in a general statute. This makes it possible for the evidence of the complainant to be taken without presence of an accused being an essential prerequisite condition. Sections 143 to 147 were introduced in the Act by virtue of Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which came into force w.e.f. 06.02.2003. According to Section 143, the offence under Section 138 of the Act is to be tried summarily which envisages fast and expeditious conclusion of a trial by the trial court. It is important to consider here that the nature of examination in each case is a different matter which has to be considered differently by the court in different circumstances. However, such a consideration has to be made keeping in view the provision of Section 145(1) and 145(2) of the Act and having regard to the object and purpose of the entire scheme of Sections 143 to 146 of the Act.

8. The Hon'ble Apex Court, in ***Radhey ShyamGarg's case (supra)***, has held that Section 145 contains a non-obstante clause. The provisions of the Code of Criminal Procedure, 1973 are thus, not attracted. The Court, subject to just exceptions may allow the complainant to give evidence by way of affidavit. Such an evidence by way of affidavit has made admissible in evidence in any enquiry, trial or other proceedings under the Code. Whereas sub-section (1) of Section 145 of the Act uses the term 'may', sub-section (2) thereof uses the term 'shall'. The first part of the aforementioned provision must be read with sub-section(1) of Section 145. It, therefore, merely points out to the discretionary power of the court conferred upon it by reason thereof. The

Court, however, has no other option but to summon and examine any person who has given evidence on affidavit as to the facts contained therein if an application is filed either by the prosecution or the accused. Section 145 must be read reasonably. Section 296 of the Code of Criminal Procedure although refers to an evidence of a formal character, no doubt contains a *pari materia* provision. It is further held that in case of evidence on affidavit deponent can be summoned only for cross-examination and not for his examination-in-chief.

9. In the instant case, petitioner was summoned as an accused in a compliant case filed by the respondent under Section 138 of the Act, qua dishonouring of a cheque issued by the petitioner in order to discharge his liability. On appearance before the trial Court, the petitioner had filed an application purported to be under Section 145(2) of the Act, seeking permission to cross-examine the respondent-complainant who had affirmed an affidavit in support of his statement. The said application was dismissed by the trial Court vide impugned order dated 18.01.2017 (Annexure P-3). The dismissal of the application moved by the petitioner to cross-examine the complainant otherwise means obstruction in bringing out the evidence on record. It is always the endeavour of the Court to do justice and not decide the case in a hurried manner. In the present case, the complainant is the only witness, who has not been allowed to be cross-examined. Therefore, it will certainly prejudice the rights of the petitioners. Without allowing cross-examination of the statement of such witness the same cannot be read in evidence in the instant summary procedure case.

10. In view of the discussion made above, the present petition is allowed. Consequently, the impugned order 18.01.2017 (Annexure P-3), passed by the trial Court is set aside. The trial Court is directed to give opportunity to the petitioner to cross-examine the respondent-complainant, in accordance with law.

November 18, 2022
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(ASHOK KUMAR VERMA)
JUDGE

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