

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-48115-2019 (O&M)

Date of Decision: 14.11.2022

Aman Goyal

.... Petitioner

Versus

Aneet Goel

.... Respondent

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. R.K. Handa and Mr. Dharam Bir Bhargav, Advocates
for the petitioner.

Mr. Munish Jolly, Advocate for the respondent.

ASHOK KUMAR VERMA, J. (ORAL)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of order dated 19.10.2019 (Annexure P-3), passed by the learned Additional Sessions Judge, SAS Nagar Mohali, whereby the applications filed by the petitioner for additional evidence in pending Criminal Appeal No. 544 dated 07.03.2017 (now Criminal Appeal No. 91 dated 07.03.2017), titled as 'Aman Goyal Vs. Aneet Goel', have been dismissed.

Briefly, respondent-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act') against the petitioner, on the allegations that the petitioner induced the respondent-complainant to invest a sum of Rs.2,00,00,000/- (Rupees Two Crores) in their project by representing himself to be having a vast business empire and also that his wife had been allotted a retail dealership

by Indian Oil Corporation Ltd. He also assured the respondent-complainant, in case, he failed to start the project by October, 2012, he would return his money. Upon this, the respondent-complainant had transferred an amount of Rs.2,17,00,000/- in account of M/s Sakshi Trading Company, owned by the petitioner. Since, Rs.2,00,00,000/- was required by the petitioner, he returned a sum of Rs.16,00,000/- to the complainant in two installments i.e. Rs.7,00,000/- on 16.11.2011 and Rs.9,00,000/- on 27.02.2012 and retained Rs.2,01,00,000/-. On failure of the petitioner to start the project, the complainant demanded his money back and in order to discharge his liability, the petitioner had issued Cheque No. 049331 dated 16.11.2012 for Rs.2,33,00,000/- drawn on Central Bank of India, Sector-10 Panchkula. On presentation, the said cheque was returned with a memo dated 19.11.2012 with remarks "Exceeds Arrangement". The complainant filed a complaint under Section 138 of the Act against the petitioner. After holding trial, vide judgment of conviction and order of sentence dated 09.02.2017, the petitioner was convicted under Section 138 of the Act and sentenced to undergo rigorous imprisonment for two years and to pay a compensation of Rs.2,00,00,000/- (Rupees Two Crores) to the complainant-respondent.

Being aggrieved against the judgment of conviction and order of sentence dated 09.02.2017, passed by the trial Court, the petitioner has preferred Criminal Appeal No. 544 dated 07.03.2017 (now Criminal Appeal No. 91 dated 07.03.2017) titled as 'Aman Goyal Vs. Aneet Goel'. During the pendency of said appeal, the petitioner has filed two applications dated 18.05.2017 and 14.09.2017 respectively, under

Section 311 Cr.P.C., seeking permission to adduce additional evidence. Vide impugned order dated 19.10.2019 (Annexure P-3), the learned Additional Sessions Judge, SAS Nagar, dismissed both the aforesaid applications. Hence, the present petition.

Learned counsel for the petitioner *inter alia* contends that the impugned order dated 19.10.2019 (Annexure P-3) passed by the lower Appellate Court, is based on surmises and conjectures. The documents/evidence sought to be produced on record are material and relevant for the just and proper decision of the appeal. The Appellate Court, has wrongly dismissed both the applications filed by the petitioner on the ground that the same were filed only to delay the proceedings in the appeal. In support of his contentions, learned counsel for the petitioner has relied upon judgments in ***(i) Swaraj Mazda Ltd. (now known as SML ISUZU Ltd.) vs. Vijay Pal Adhana, 2019 (1) RCR (Criminal) 814; (ii) Brig. Sukhjeet Singh (Retd.) MVC vs. The State of Uttar Pradesh and others, 2019 (1) RCR (Criminal) 895; (iii) M/s Hindustan Food Products India vs. State of M.P. And another, 2008 (2) RCR (Criminal) 825; (iv) Rajeshwar Prasad Misra vs. State of W.B. And another, 1965 AIR (SC) 1887; (v) Khushwant @ Kushwant vs. State of Rajasthan, 2020 (1) Current Judgments-Criminal-Rajasthan 0157; (vi) Veer Singh Loopke Ex. MLA vs. Sukhbinder Singh Sarkaria MLA and another, 2021(1) Law Hearld-Punjab 0316; (vii) State represented by Deputy Superintendent of Police vs. Tr. N.Seenivasagan, 2021 AIR (SC) 2441 and (viii) Manju Devi Vs. State of Rajasthan and another, 2019(2) SCC (Criminal) 0765.***

On the other hand, while refuting the above submissions of learned counsel for the petitioner, learned counsel for the respondent submits that the lower Appellate Court has rightly dismissed the applications filed by the petitioner as the same were filed only to delay the proceedings in the appeal. The documents sought to be produced before the lower Appellate Court, were very well in the notice and possession of the petitioner during the pendency of trial but he never produced the same. Thus, he prayed for dismissal of the present petition.

After hearing learned counsel for the parties and going through the relevant record, this Court finds that the instant petition is completely meritless.

Respondent-complainant had filed a complaint under Section 138 of the Act against the petitioner-Aman Goyal on 21.01.2013. After summoning of the accused, complainant-himself appeared in the witness-box as CW-1. A lengthy cross-examination of the complainant was conducted by learned counsel for the petitioner. In cross-examination, the complainant had stated that he did not remember that he stood as a guarantor of the loans raised by the petitioner, his father, mother and wife. Perhaps he was introduced by the bank in these loans. As such, if the complainant-respondent stood as a guarantor for loans in the name of petitioner, his father, mother and wife, then it was incumbent upon him to bring on record the documents at that very time. The documents which the petitioner now intends to produce before the Appellate Court, were already in his knowledge during the pendency of trial but he never produced those documents in his evidence during the trial.

In his statement under Section 313 Cr.P.C., the petitioner had specifically taken a plea that respondent-complainant had obtained his cheque book by forging his signatures. In this regard, an FIR was also lodged by the petitioner against the respondent-complainant, but the same was cancelled. In order to prove his version with regard to aforesaid forgery, sufficient time was granted to petitioner by the trial Court to produce the evidence, but no such evidence was led by the petitioner to this effect.

No doubt, additional evidence at appellate Stage is permissible, in case of failure of justice, but it is a settled law that such power must be exercised sparingly and only in exceptional cases where the Court is satisfied that directing additional evidence would meet the ends of justice, just to cure irregularity. However, the provisions of Section 391 Cr.P.C., cannot be pressed into service in order to fill up lacuna in the case of prosecution. In these circumstances, it lends credence from *State of Gujrat Vs. Mohan Lal Jitamlji Prwal and another*, AIR 1987 SC 1321; *Jain Singh Vs. Haryana Agro. Industries Corpn. Ltd., Narnaul*, 2006(3) RCR (Criminal) 937; *Parveen Singh Vs. State of UP and another*, 2011(3) CCC 464 (Allahabad) and *Kashmir Singh Vs. M/s Preet Hire Purchase and Leasing Corporation* 210(1) CCC 573. In the present case, the petitioner after conducting the cross-examination of the complainant-respondent had sufficient time to prove the documents before the trial Court which he intends to produce as additional evidence, but no such prayer was ever made by him before the trial Court. Under these circumstances, this Court is of the considered

view that the petitioner wants to produce fresh evidence and intends to fill up the lacunae of his case at the belated stage. It is well settled law that a party is supposed to pursue its case with due care and diligence and cannot be allowed to fill up the lacunae of its case, at a later stage.

In view of the discussion made above, this Court finds no illegality or perversity in the impugned order dated 19.10.2019 (Annexure P-3). Accordingly, the present petition being completely devoid of any merit stands dismissed.

Since, the main petition stands dismissed, therefore, all the criminal miscellaneous applications pending, if any, shall also stand dismissed.

November 14, 2022
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(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether Reportable **Yes/No**