

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

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CRM-M-58045-2022

Date of Decision: 13.12.2022

M/s A and A Finance and Another

...Petitioners

Versus

Sheetal Khanna

...Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present :- Mr. Sandeep Arora, Advocate,
for the petitioner

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 482 Cr.P.C. is seeking setting aside of order dated 10.10.2022 (Annexure P-4) whereby JMIC, Jalandhar has dismissed application of the petitioner under Section 311 Cr.P.C. seeking permission to lead additional evidence as well as application for amendment of the complaint filed under Section 138 of the Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner, *inter alia*, submits that petitioner filed complaint under Section 138 of Negotiable Instruments Act, 1881 and in the complaint, the composition of complainant i.e. A&A Finance was disclosed as proprietorship concern whereas it is a partnership firm. The petitioner realizing its mistake moved two applications under Section 311 Cr.P.C seeking amendment of memo of parties and permission to place on record copy of registered partnership deed. Learned trial Court has wrongly and mechanically declined applications of the petitioner. The petitioner would suffer irreparable loss and no prejudice is going to be caused to the respondent if applications filed under Section 311 Cr.P.C. are allowed.

3. The operative portion of order passed by trial Court reads as:

*“4. Both the Ld. counsel argued in the line of their respective pleadings. It is pertinent to mention that in para No. 2 of the complaint suggests that financial assistance was being provided to the accused in the personal capacity by Arvind Pal Singh. Reference was also made to the existing family relation with the accused. Meaning thereby, the liability of the accused person, if any is toward Arvind Pal Singh only and not against the M/s A and A Finance. Here, it is worth mentioning that as per the cheque in question the payee is M/s A and A Finance only. Therefore, in my considered opinion that amendment sought to be made is not a curable mistake. The law relied upon by the Ld. counsel for the complainant in **U.P. Pollution Control Board versus Modi Distilleries (1987) 3 SCC 684** is not applicable to the facts of the present case. It is also worth mentioning that in the instant case the final arguments have already been advanced by Ld. counsel for the accused. During those arguments the basic contention of the Ld. counsel for the accused is that the legal liability is towards Mr Arvind Pal Singh in his personal capacity and the name of the payee is reflected in the cheque in question is M/s A & A Finance. He also contended that the cheque in question was not issued by the accused against any legally enforceable debt in favour of M/s A and A Finance. Now at this juncture the clear object of the complainant is to get away from this legal clutch.*

*5. Now, even if for the sake of arguments, it is presumed that the amendment application filed by the complainant is allowed then also the same does not serve any purpose for the complainant. As per section 138 (B) the legal notice should be sent by the payee or the holder in due course. The text read as “ **the payee or the holder in due course***

of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 30 days of the receipt of the information by him from the bank regarding the return of the cheque as unpaid”.

Now the legal notice Exhibit-C3 was sent by Mr Arvind Pal Singh as a proprietor. The entire complaint does not reflect that M/s A and A Finance is either the payee or the holder in due course. The amendment of the legal notice never sought and in my considered opinion cannot be permitted. The beneficial provisions of the law should not be allowed to be used in such a manner so as to provide unjust benefit to one of the party before the court at the cost of the other. Therefore, keeping in view these facts the instant application is dismissed.

6. So far as, application under section 311 Cr.P.C. is concerned the same is filed to lead additional evidence in the form of bringing on record the partnership deed, the certified copy of addenda deed and certified copy of form A and C. Since, the present complaint is filed in the capacity of proprietor by Mr. Arvind Pal Singh therefore placing on record these document is not relevant for the just decision of the case. Therefore, in view of my decision on application for amendment of the complaint as well as keeping in view the relevancy of these documents the application under section 311 Cr.P.C. is also dismissed.”

4. It is undisputed fact that notice as required under Section 138 of Negotiable Instruments Act was issued in the name of Arvind Pal Singh whereas petitioner is claiming that petitioner is a partnership firm. The defect unearthed at this stage is not a curable defect.

5. There is no infirmity in the findings recorded by learned trial Court, thus, no interference of this Court is warranted. The petition, being bereft of merit, deserves to be dismissed and is accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

13.12.2022
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>