

S. No.249

2023:PHHC:164211

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

CRM-M-357 of 2023

Date of Decision:20.12.2023

Rekha Sharma

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. S.S. Dinarpur, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

**Mr. Sanjiv Kumar Yadav, Advocate for respondent
No.2- complainant.**

DEEPAK GUPTA, J. (Oral)

By way of present petition filed under Section 482 Cr.P.C., petitioner prays for setting aside the impugned order dated 01.12.2022 (Annexure P.4) passed in complaint case bearing No.Coma/455/2018 dated 01.03.2018 titled as “Karan Aggarwal Vs. Rekha Sharma” whereby an application under Section 311 Cr.P.C dated 30.09.2022 (Annexure P.2) filed by the accused (petitioner) has been dismissed. Petitioner also prays to allow the application so as to permit him to recall DW3 – Shri Anuj Anshuman, Clerk of Union Bank of India, Ambala City.

Perusal of the paper book would reveal that petitioner is facing trial as an accused in a criminal complaint titled as “Karan Aggarwal Vs. Rekha Sharma”, pending in the Court of learned Judicial Magistrate Ist Class, Ambala regarding dishonor of cheque No.045508 dated 15.11.2017 for an amount of ₹50,000/-. The case was at the stage of defence evidence when petitioner moved an application dated 30.09.2022 (Annexure P.2) under Section 311 Cr.P.C., so as to recall DW3 – Shri Anuj Anshuman, the Clerk in the Union Bank of India,

submitting therein that the cheque in question was dishonored due to 'stop payment' in the year 2015. Accused wanted to examine the official of the Bank so as to adduce evidence in respect of stop payment cheque. DW3 was summoned for that purpose. However, DW3 inadvertently brought the record of another cheque, whereas Head Office of the Union Bank of India was in custody of the record of stop payment cheque No.045508. Therefore, it was necessary to recall DW3 so as to produce the record relating to stop payment cheque No.045508. Complainant – respondent filed reply dated 31.10.2022 (Annexure P.3) opposing the application. Application has been dismissed vide impugned order by observing that the claim made by accused that inadvertently record of wrong cheque was produced was not tenable and that the number of opportunities had already been availed by the accused- petitioner to produce his defence.

Today Power of Attorney has been filed by learned counsel for respondent No.2- complainant.

Although learned counsel for respondent No.2 – complainant concedes the fact that record of the cheque in question i.e. cheque No.045508 which is the subject matter of the complaint was not produced by DW3 and inadvertently record of some other cheque was produced but petition is opposed on the ground that application has been moved to delay the proceedings and besides the fact that cheque was dishonored for stop payment is not in dispute.

After considering submissions of both the sides, this Court finds that the impugned order passed by the trial Court cannot be sustained. Once the trial Court had allowed the examination of DW3, who had to bring the record pertaining to cheque No.045508, which the witness did not bring and rather inadvertently produced record of some other cheque, the trial Court should have

allowed the application so as to recall the concerned witness so as to produce the correct record as summoned. What will be the evidentiary value of the evidence to be brought on record by DW3 or what will be the effect of alleged admission already made pertaining to the cheque as is contended by learned counsel for respondent No.2, will be subject to appreciation by the trial Court at the appropriate stage.

As such, present petition is hereby allowed. Impugned order dated 01.12.2022 (Annexure P.4) is set aside. The trial Court is directed to recall DW3 so as to bring the record of the cheque in question which is subject matter of the complaint and proceed further in the case in accordance with law.

December 20, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No