

2023:PHHC:124037

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CRM M-3479-2019

Date of Decision: 20.09.2023

Kamal Pahuja

...Petitioner

Vs.

Nitin Sethi

...Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Rohan Maudgil, Advocate for
Mr. Sandeep Sharma, Advocate
for respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 11.12.2018 passed by the Court of Judicial Magistrate 1st Class, Gurgaon (now Gurugram), (Annexure P-1) whereby, the application under Section 311 Cr.P.C. was moved by the respondent/complainant in a Criminal Complaint No. 16078 dated 19.12.2018 titled as “**Nitin Sethi VS. Kamal Pahuja Kukreja**” under Section 138 of the Negotiable Instruments Act, 1881, was ordered to be allowed.

2. Learned counsel for the petitioner submits that the respondent/complainant had filed a criminal complaint under Section

138 of the Negotiable Instruments Act (hereinafter to be referred as '**the Act**') against the present petitioner. It was stated in the said complaint that the respondent had lent a sum of Rs. 17,00,000/- as friendly loan in July 2016 and the petitioner had issued two cheques dated 04.11.2016 and 07.11.2016 for the sums of Rs. 11 lacs and Rs. 6 lacs, respectively, however, the cheques were dishonoured with the remarks "payment stopped by the drawer". After the preliminary evidence, the petitioner was ordered to face trial under Section 138 of the Act. During the course of trial, the complainant was cross-examined by the petitioner under Section 145(2) of the Act. At this stage, an application was filed by the respondent under Section 311 Cr.P.C., for summoning two witnesses, namely, Sweeti Sethi and Rohit Dhingra. A detailed reply (Annexure P-5) was filed to the said application. Learned counsel further contends that the respondent had mentioned no reasons in his application under Section 311 Cr.P.C., which would justify the summoning of Sweeti Sethi and Rohit Dhingra. Thus, it was prayed that the impugned order may be set aside.

3. On the other hand, learned counsel appearing on behalf of the respondent submits that in the present case, the respondent wanted to examine Sweeti Sethi wife of the respondent and Rohit Dhingra as two witnesses, who were witnesses to the transactions in

the present case. Thus, the impugned order was perfectly legal and liable to be upheld by this Court.

4. I have heard learned counsel for the parties and perused the record.

5. From the evidence, it is evident that the complaint (Annexure P-2) was filed by the respondent/complainant against the present petitioner in the Court of Judicial Magistrate 1st Class, Gurugram. Even, he was examined as a witness and was also subjected to cross-examination. However, the name of the witness Rohit Dhingra neither appeared in the complaint nor anywhere in the affidavit submitted by him before the trial Court. Thus, it is evident that the respondent/complainant wanted to fill up the lacuna in the present case and Rohit Dhingra, who had no connection with the present case, was to be introduced as a witness in the present case. However, it had been stated in the complaint that the respondent/complainant had given a sum of Rs. 17,00,000/- as a friendly loan after withdrawing the said amount from his wife's account. Even, the name of Sweeti Sethi was mentioned as one of the witness in the complaint as well as in the testimony of the respondent No. 1, when he appeared as a witness. Thus, it is apparent that Sweeti Sethi would be a material witness and the trial Court has rightly summoned her as a witness under Section 311 Cr.P.C.

6. Consequently, the present petition is partly allowed and the impugned order dated 11.12.2018 passed by the Judicial Magistrate 1st Class, Gurugram, is modified to the extent that only Sweeti Sethi shall be allowed to be examined as a witness in the present case.

7. Disposed off.

20.09.2023

amit rana

(N.S.SHEKHAWAT)**JUDGE**

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