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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-14212-2023

Date of Decision: 20.03.2023

RAJPAL SINGH

..... PETITIONER

VS

DALJIT KAUR

... RESPONDENT

CORAM: **HON'BLE MR. JUSTICE GURBIR SINGH**

Present : Mr.Navinder Singh Dandiwal, Advocate for the petitioner.

GURBIR SINGH, J. (ORAL)

The prayer in this petition under Section 482 Cr.P.C is for quashing the impugned order dated 30.11.2022 (Annexure P-2) vide which the application of the petitioner for taking further evidence under Section 391 Cr.P.C in CIS No. NACT/447/2015, (which has been decided vide Judgment dated 05.07.2022, Appeal against the Judgment dated 05.04.2022 has been filed which is pending for 17.03.2023) has been declined illegally, arbitrarily and without appreciating the fact and circumstances of the case.

Learned counsel for the petitioner submits that the complaint was filed by Daljit Kaur through attorney but unfortunately, complainant died during the pendency of the complaint. Thereafter, an application was moved by Sukhcharan Singh to implead him as legal heir of Daljit Kaur-complainant on the basis of Will dated 11.08.2016 executed by the complainant Daljit Kaur(since deceased). Vide order dated 27.02.2019 said application was allowed and on the very same day, petitioner was declared

as proclaimed offender so the petitioner could not challenge the said order. The deceased Daljit Kaur neither filed any suit for recovery nor did she return ante-dated cheque during her life time. It is impossible that the amount of the cheque would be same as mentioned in the receipt dated 01.06.2019 which is issued after about six years. If the complaint is pursued by all the legal heirs of the Daljit Kaur then Sukhcharan Singh is only entitled to receive 1/5th share of the alleged cheque amount.

Learned trial Court did not decide the application of the petitioner to examine other legal heirs of the deceased even though the Revision Court had allowed vide order dated 15.07.2021, holding that they were in fact, the persons, who could challenge the genuineness of the Will. It is argued that original Will of Daljit Kaur since deceased was not produced before the Court but her legal heir was impleaded on the basis of the photocopy of the Will dated 11.08.2016. By examining the other legal heirs, it would end the multiplicity of the litigation. The other legal heirs of Daljit Kaur have challenged the Will being surrounded by the suspicious circumstances. In case, the other legal heirs of Daljit Kaur succeed in their suit then they will claim their share from the cheque amount.

Heard.

The further evidence as per provision of 391 of the Code of Criminal Procedure can be taken, if said additional evidence is necessary for just decision of the case. The complaint was filed by Daljit Kaur through her Attorney. She died during the pendency of the case. One of the legal heirs, namely, Shri Sukhcharan Singh, her son was brought on record being a legal heir. The purpose to bring on record the legal heir is that the

complainant in such cases should not remain unrepresented and complaint is properly prosecuted. It is not necessary that all the legal heirs are to be brought on record. The legal heir brought on record in this case, is only for the purpose of prosecuting the complaint and if there is dispute regarding inheritance of the property of the complainant, that is to be decided in the appropriate proceeding and not in the complaint.

The examination of other legal heirs of complainant is not necessary at all for just decision of the case. Learned trial Court has rightly relied on case Jai Singh Vs. Haryana Agro Industries Corporation Limited, Narnaul, 2006(3) RCR (Criminal) 936 that powers under Section 391 Cr.P.C can only be exercised when there is a failure of justice. The petitioner is apprehending that other legal heirs of Daljit Kaur since deceased would claim share in the cheque amount so he wants to examine other legal heirs of complainant. That dispute is not to be decided in the complaint proceedings under Section 138 of Negotiable Instruments Act. In the case in hand, the order passed by Learned Appellate Court is in accordance with law. There is no merit in the petition.

Petition stands dismissed.

(GURBIR SINGH)
JUDGE

20.03.2023.
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No