

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-18020-2022 (O&M)
Date of Decision: 24.04.2023

SUMESH CHADHA PETITIONER

VS
ASHWYN SINGHANIA RESPONDENT

CORAM: HON’BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Rakesh Bhatia, Advocate for the petitioners.

Mr. Yogesh Bansal, Advocate with
Mr. Lakshy Goel, Advocate and
Mr. Asheem Kumar, Advocate for the respondent.

GURBIR SINGH, J. (ORAL)
* * * *

This petition is moved for quashing of the order dated 30.03.2022 (Annexure P-4) passed by Learned Judicial Magistrate First Class, Ludhiana whereby an application for de-exhibiting documents Ex.C-15 i.e. statement of document was dismissed.

Learned counsel for the petitioner submits that documents exhibit C-15 was not part of pleadings in the affidavit and power of attorney holder exhibited the statement of account in the absence of counsel for the accused mischievously and the same was not exhibited in accordance with the Indian Evidence Act. The conditions referred to in Sub Section 1 of Section 65-B has not been fulfilled.

A prejudice has been caused to the petitioner and the same was exhibited in his absence when the counsel left the Court after cross examining the witness.

As per order dated 09.05.2022, record is received.

Learned counsel for the respondent has submitted that exhibit C-15 is a statement of account. As per the interim order, exhibit C-15 was exhibited in the presence of the counsel for the accused. He further submits that learned counsel for the petitioner has come to this Court with wrong averments that after cross examining the witnesses, counsel for the petitioner had left the court and thereafter, documents C-15 have been exhibited. The document was tendered only on that day and no cross examination was conducted.

Heard.

During the course of hearing on 17.09.2021 in the learned trial Court, learned counsel for the complainant tendered a copy of the ledger account as C-15 and closed the evidence. The said order is as under:-

“ Present: Sh. Dalip Garg, Advocate, Counsel for the complainant.

Ld. Counsel for accused.

An application for exemption of the accused moved by his Counsel.

In view of contents mentioned in the said application, the personal appearance of accused is exempted for today only.

Today, Sh. Dalip Garg, Advocate counsel or the complainant come present and stated that he tendered copy of ledger account of Chadha Motors as Ex. C-15 duly signed by the complainant and also closed evidence on behalf of complainant.

Accordingly, case stands adjourned to 05.10.2021 for recording statement of accused under Section 313 of Cr.P.C. ”

On that day, counsel for the accused is shown present at time of tendering the document. There was no cross examination of any witness conducted on that day. Thereafter on 14.10.2021, the petitioner moved an application for de-exhibiting the document. Learned trial Court disposed of the application by passing detailed order, on 30.03.2022, the operative part thereof is reproduced as under:-

“4. Arguments heard. Judicial file perused. After hearing the rival contentions of both the parties and perusal of record on judicial file, the court is of considered view that first of all, mere

exhibition of a document does not mean that the said document has been proved or admitted into evidence. In addition to it; in the case titled “Dr. S.P.Arora Vs. Satbir Singh”, it has been held by the Hon’ble Punjab and Haryana High Court, “the attempt of party for production and to exhibit documents cannot be thrown out at the very threshold”. Furthermore, there is no such provision for de-exhibiting of documents which are already exhibited in evidence. Keeping in view the above mentioned discussion the present application is dismissed. ”

Trial court clearly mentioned that mere exhibition of a document does not mean that the said document has been proved or admitted into evidence. The petitioner has got right to challenge admissibility of the document during the arguments.

At this stage, learned counsel for the petitioner submits that he was not given opportunity to cross-examine on the statement of account Ex.C-15. The petitioner actually wants to cross-examine the complainant. If petitioner wants to recall any witness than he can move an application with a request to recall the witness for further cross-examination. Ankur Singhania, attorney of complainant is examined as CW. He can move application for recalling him and there is no bar.

There is no merit in the petition, thus the present petition stands dismissed. In case, the petitioner moves an application for re-calling the CW, Ankur Singhania, the learned trial Court shall pass an order for re-calling the witness in accordance with the law without being influenced by any observation made herein above.

Record of the learned trial Court be returned and parties shall appear in the learned trial Court on 05.05.2023.

24.04.2023
renu

(GURBIR SINGH)
JUDGE

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