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

CRM-M-21078 of 2022 (O&M)

Date of decision: 20.07.2023

Harish Kumar**...Petitioner**

Versus

Veena Rani and another**...Respondents****CORAM: HON'BLE MR. JUSTICE ARUN MONGA**

Present:- Mr. Lajpat Sharma, Advocate for
Mr. Vivek Khatri, Advocate,
For the petitioner.

Ms. Nisha Rana, Advocate,
For respondent No.1.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J. (ORAL)

This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr. P.C.') *inter alia* seeking quashing of order dated 25.02.2022 (Annexure P-4), passed by Ld. Judicial Magistrate First Class, Hissar, whereby application filed by the petitioner under Section 311 of Cr.P.C (Annexure P-2) has been dismissed.

2. On a complaint filed by the petitioner under section 138 of Negotiable Instruments Act, 1881, against dishonor of a post-dated cheque bearing No.477683 dated 12.09.2019, issued as part payment in discharge of loan take by respondent from the petitioner.

3. Learned counsel appearing on behalf of petitioner contends that petitioner has instituted a complaint under Section 138 of N.I Act against the respondent No.1 on account of dishonor of cheque. During the proceedings of trial, he moved an application seeking direction to be issued to accused to give his voice sample so as to get the same compared with the audio recording in the

mobile phone of petitioner. He further contends that learned trial Court has erroneously dismissed the said application observing that proceedings under Section 138 of N.I. Act are summary in nature.

4. On the contrary, learned counsel for respondent No.1 opposes the application on the ground that complainant/petitioner herein has concealed material facts from the Court. Application under Section 311 Cr.P.C was moved just to delay the proceedings as petitioner earlier also filed an application under Section 295 Cr.P.C which was also dismissed by learned trial Court. Hence, prayed for dismissal of instant petition.

5. I have heard rival contentions of learned counsels for the parties and have gone through the records carefully.

6. Para 8 of the impugned order dated 25.02.2022 (Annexure P-4) sums up the entire controversy. For ready reference it is reproduced herein below:

“xxx

8. *By way of present application, complainant wants the Court to direct the complainant and the accused to give their voice samples in the Forensic Lab Madhuban so that the same be compared with DVD EX. C19. However, this Court is of the view that the dispute between the parties in a private complaint under Section 138 of NI Act is tried summarily and the complainant in such a case is required to prove his own case by leading evidence on his behalf. He cannot compel the accused to give voice sample in the FSL. Even the complainant is not remedy less as he can prove the contents of the DVD under the provisions of the Indian Evidence Act. The Indian Evidence Act does not only admit video/audio call recording only if it is certified by the FSL authority. The complainant can independently prove the alleged conversation. Learned counsel for the applicant/ complainant has placed reliance on case titled as “Ashish Goyal v. Birjesh” CRM-M-No.30888 2017, date of decision 08.08.2018. This Court is of the view that the facts of this case are not applicable to the complaint in hand, as in that case the entire case of the complainant was that there was no formal agreement executed between the parties regarding placing of order by the accused, in the absence of such document, in order to prove the conversation which had taken place between the parties, the Court allowed the application for testing the voice of the accused before CFSL. Whereas, in the present complaint, it is not the case of complainant that they used to deal only through the phone call*

etc. Rather vide the present application the applicant/complainant wants to prove a random conversation recorded from a hidden camera. So, the facts in both the cases are different.

xxx”

7. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law.

8. In view of the above, it is clear that onus to prove the case is upon the complainant, who is required to prove his case on his own. There is thus no room for interference in the aforesaid valid reasons recorded by learned Court below, with which I am in agreement. The petition *sans* merit and the same is hereby dismissed.

9. Pending applications, if any, shall also stand disposed of.

JULY 20, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No