

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

203

CRM-M-43995-2014

Date of Decision: 21.11.2023

Raj Kumar

...Petitioner

Versus

Amarjit Singh

... Respondent

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

Present : Mr. Pankaj Bali, Advocate
for the petitioner. .

Mr. D.S. Randhawa, Advocate
for the respondent.

N.S.SHEKHAWAT, J.

1. The petitioner has filed the present petition with a prayer to set-aside the order dated 20.08.2014 (Annexure P-7) passed by the Court of Sub-Divisional Judicial Magistrate, Khanna, in a complaint case No. 57/4 dated 17.05.2008, titled as “**Amarjit Singh Vs. M/s Raj Kumar and Others**” whereby, the application filed by the respondent/complainant under Section 311 Cr.P.C., has been allowed and the permission has been granted to him to file fresh affidavit of the complainant.

2. As per the case of the respondent/complainant, he had filed a complaint under section 138 of the Negotiable Instruments Act 1881(hereinafter to be referred as the '**the Act**') and Section 420 of IPC against the present petitioner for the dishonor of a cheque bearing No. 593178 for a sum of Rs. 6.62 lacs. After the filing of the complaint, the petitioner was ordered to be summoned as an accused

in the said case.

3. At this stage, it is relevant to mention that a similar complaint No. 58/4 dated 19.05.2006 was filed by the respondent/complainant against the petitioner. However, vide order dated 30.11.2012 (Annexure P-2), the petitioner was ordered to be discharged. In the present case, the respondent/complainant tendered his affidavit of examination-in-chief on 19.07.2013 as CW1 and had also exhibited all the documents on the same day. Thereafter, the case was adjourned for cross-examination and on 23.08.2013, the defence counsel had cross-examined the respondent. After that, 3 /4 times, the case was adjourned for further witness by the respondent.

4. However, the respondent filed an application dated 18.07.2014 (Annexure P-5) for allowing the complainant to file the fresh affidavit of the complainant as his examination-in-chief and alleged that another complaint with the same title was pending between the parties and due to inadvertence, the respondent had filed affidavit of that complaint in the present case. Vide the impugned order dated 20.08.2014 (Annexure P-7), the trial Court allowed the said application by observing that the present Act is a special statute and Cr.P.C. was not strictly applicable to the present proceedings. Moreover, the complainant cannot be penalized for the inadvertent mistake on the part of his counsel. The petitioner filed a criminal revision before the Sessions Court, however, the said revision was dismissed on the ground of maintainability of the revision petition and the petitioner has filed the present petition with a prayer to set-

aside the order dated 20.08.2014 (Annexure P-7).

5. Learned counsel for the petitioner contends that the impugned order dated 20.08.2014 (Annexure P-7) has been passed by completely overlooking the mandatory provisions of the Cr.P.C. He further contends that affidavit was filed by the respondent 10 months ago and had been fully cross-examined by the petitioner. However, the application in hand was filed, just to delay the trial proceedings. Even, there was no provision either in Cr.P.C. or the in the Act to file the second affidavit of the complainant in evidence. Still further, the impugned order was in violation of various judgments passed by the Hon'ble Supreme Court.

6. On the other hand, learned counsel for the respondent submitted that the impugned order dated 20.08.2014 (Annexure P-7) was strictly legal and justified. Two complaints with the same title were filed by him and inadvertently, the counsel representing him before the trial Court had filed the affidavit of other case in the present case and it was an irregularity only, which has been cured by the trial Court by passing the impugned order dated 20.08.2014 (Annexure P-7).

7. I have heard the learned counsel for the parties and perused the records.

8. The Hon'ble Supreme Court in the matter of **M/s Haryana State Coop. Supply and Marketing Federation Ltd. Vs. M/s Jayam Textiles and Another** 2014 (2) RCR (Criminal) 532 has held as follows:-

*“Having heard the learned counsel for the parties and after perusing the material on record, we find that admittedly authorisation by the Board of Directors of the appellant-Federation was not placed before the Courts below. But, we may notice that a specific averment was made by the appellant-Federation before the learned Judicial Magistrate that the said General Power of Attorney has been filed in connected case being CC No. 1409/1955, which has neither been denied nor disputed by the respondents. In any case, in our opinion, if the Courts below were not satisfied, an opportunity ought to have been granted to the appellant-Federation to place the document containing authorisation on record and prove the same in accordance with law. This is so because procedural defects and irregularities, which are curable, should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use. { See **Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh, 2006(1) R.C.R. (Civil) 18: 2005(2) R.C.R. (Rent) 637: (2006) 1 SCC 75**}. ”*

9. Still further, it is apparent that the counsel, who represented the respondent, by mistake had filed the affidavit of other case between the parties, in the present case as well. The trial Court

by invoking the provisions of Section 311 Cr.P.C., had rightly corrected the said mistake on the part of the counsel. Still further, the provisions of Section 311 Cr.P.C. is expressed in the widest possible terms and do not limit the discretion of the Court in any manner. Even otherwise, it is cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or points in issue. Even, in a situation like this, the Court cannot sit as a mute spectator and rightly permitted the respondent/complainant to adduce his evidence, by way of fresh affidavit of the respondent/complainant. Even otherwise, apparently, it was a fault on the part of the counsel representing the respondent/complainant before the trial Court and the respondent cannot be made to suffer on account of the said fault/bonafide mistake.

10. Thus, there is no force in the submissions made by the learned counsel for the petitioner and the petition is, accordingly, ordered to be dismissed.

21.11.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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