

CRM-M-7830-2018 (O&M)

219 (1st case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-7830-2018 (O&M)

Date of decision: September 01, 2023

Mukesh Chandra Sharma

....Petitioner

versus

Satya Prakash Sharma @ S. P. Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Aditya Jain, Advocate for petitioner.

None for respondent.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of impugned order dated 20.12.2017 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad whereby application filed by respondent for additional evidence in a complaint case No.63 of 2016 dated 05.05.2017/06.02.2016 filed by petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was allowed.

2. Succinct facts first, as pleaded in the instant petition.

2.1 A complaint under section 138 of the NI Act was filed by the petitioner against the respondent averring that petitioner and respondent are old friends having good relations. Respondent sought a loan of Rs.1,50,000 /- from the petitioner and the same was given to him on 15.11.2014 in cash. Respondent assured to return the same within one year. In order to discharge his liability, respondent issued a cheque No.504313 dated 21.11.2015 and requested the petitioner to present the same on 23.11.2015. When presented, the same was dishonored vide return memo dated 01.12.2015 for the reasons "Account closed". On further assurance of respondent, petitioner again presented the cheque in January 2016, which was again dishonoured vide return memo dated 12.01.2016 on the ground "account closed". Petitioner issued a legal notice dated

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16.01.2016 to the respondent. Therefore, complaint (Annexure P-1) under section 138 of NI Act was filed against respondent by petitioner.

3. Learned counsel for the petitioner contends that respondent adduced his evidence by way of an affidavit which was allowed vide order dated 27.07.2017. Thereafter, on 23.10.2017, respondent again filed an application for adducing additional evidence by way of an affidavit. Petitioner had also submitted detailed reply to the said application.

3.1. Vide order dated 20.12.2017 (Annexure P-1), learned Court below allowed the application for additional evidence by way of affidavit filed by respondent-accused, subject to costs of Rs.2,000/- to be deposited in the DLSA, Faridabad.

4. None appears on behalf of the respondent.

5. I have heard learned counsel for petitioner and gone through the case file.

6. Impugned order dated 20.12.2017 (Annexure P-1) passed by learned JMIC, Faridabad is *inter alia* premised on the following reasoning:

“3. On the other hand, the Ld. Counsel for the complainant argued that the complainant has no knowledge about the fact that the accused took a committee from Shyam Babu and Shyam Babu took a blank signed cheque as security from the accused or not. Infact, the complainant gave a friendly loan to the accused and to avoid the payment, accused made a false story. It appears that Shyam Babu being accused is in connivance with him and both of them are trying to blackmail the complainant. He also argued that the accused is only making false allegations against his counsel and the complainant as well. Neither there was any conspiracy between the complainant and the previous counsel of the accused nor the complainant conspired with Shyam Babu as alleged. Rest of the averments made in the application were denied and dismissal of the application has been prayed for.

4. After hearing arguments from both the parties and careful perusing of the case file, this court is of the considered view that on 27.07.2017, an application under Section 315 Cr. P.C. was filed on behalf of the accused which was allowed and the accused tendered his affidavit Ex. DWI/A in his evidence. Now the accused stated that he could not file his complete affidavit due to mistake on the part of his previous counsel. If the present application is not allowed in that case serious prejudice will be caused to the accused. No prejudice will be caused to the complainant as the complainant will have full opportunity to cross examine the accused. Hence, in the interest of justice, the present application is allowed, subject to the cost of Rs. 2,000/- to be deposited in DLSA, Faridabad by the accused.”

7. There is no room for interference in the aforesaid valid reasons recorded by learned Court below.

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8. No material irregularity in law or procedure has been committed by learned Court below, so as to exercise extraordinary revisional jurisdiction herein.
9. Dismissed. Trial to proceed further.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 01, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No