IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1420-2023
Date of Decision: 01.06.2023

ASHOK ...... PETITIONER

VS

SHRIRAM CITY UNION FINANCE LTD. ... RESPONDENT

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present : Mr. Rajesh Duhan, Advocate for the petitioner.

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GURBIR SINGH, J. (ORAL)

The prayer in this petition under Section 482 Cr.P.C is for quashing of impugned order dated 16.05.2023 passed by learned Judicial Magistrate, Ist class, Karnal.

Learned counsel for the petitioner submits that the petitioner moved an application for leading additional evidence to summon the complete file/record of loan agreement dated 31.08.2017 but the same was dismissed vide order dated 16.05.2022 passed by learned Judicial Magistrate, Karnal by saying that the case is at the stage of documentary evidence as well as for final arguments. Learned counsel for the petitioner further states that order dated 16.05.2022 be set aside.

According to learned counsel for the petitioner, petitioner is summoned in the case under Section 138 of Negotiable Act in the complaint (Annexure P-1). As per averments made in the complaint that the complainant presented the cheque in his bank for its encashment but the same was returned back unpaid with the remarks "funds insufficient".

The perusal of the impugned order dated 16.05.2023 clearly shows that the defence evidence of the petitioner was closed by Court order. The relevant para No.2 and 3 of the impugned order are as under:-

> "It was argued by learned counsel for the accused that accused want to summon complete file/record of loan agreement No. CDHISTF1708310047 dated 31.08.2017 in the name of Ashok Kumar maintained by the complainant in its loan file but due to some inadvertence the above documents could not be got summoned which are material documents in order to decide the case effectively and judiciously. He further argued that accused would suffer irreparable loss and injury if the application will not be allowed. He further requested that the above said witness be allowed to summon, application may kindly be allowed. On the other hand it was argued by learned counsel for complainant that the application is not maintainable at this belated stage as the case is fixed for final arguments, the application filed by accused only with an ulterior motive to linger on the present complaint and to waste the precious time of Court as well as to harass and humiliate the complainant. He requested that the application may be dismissed with costs.
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> *Case file perused. Perusal of the file reflects that the case is at the stage of documentary evidence as well as for final arguments. Carefully perusal of the judicial file it reflects that relevant documents already filed on the case file by the complainant and the cross-examination of complainant has also been conducted by learned counsel for accused. Statement of accused under Section 263 (g) Cr.P.C. was recorded on 06.12.2022. Perusal of the statement under Section 263 (g) Cr.P.C. it reflects that accused has admitted his signature on the cheque in question and also admitted that the blank signed cheque was given at the time of taking of loan to the complainant. Since accused has already admitted loan. So there is no requirement of loan agreement in the case file. Moreover complainant has not put any suggestion regarding loan agreement and not even defer cross-examination of the complainant for requirement of the loan agreement at the time of cross-examination. Cross- examination of complainant was completed on 02.03.2023. From 02.03.2023 to 27.04.2023 many effective opportunities were given to accused for defence evidence and thereafter on 27.04.2023 the defence evidence was closed by Court order. Perusal of case file reflects that the present case is summary trial case. This court is of the view that present application has been filed at this stage only to delay the matter. Hence, application under Section 311 Cr.P.C. is hereby dismissed. Nothing expressed hereunder shall be construed as my expression on the merits of the case."*

Thus, the petitioner did not deny before the learned trial Court, his signatures on the cheque in question and also admitted that blank signed cheque was given at the time of taking of loan. Section 311 Cr.P.C is reproduced as under:-

> *"Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."*

As per Section 311 Cr.P.C, the Court is empowered to summon any person as a witness at any stage of trial, inquiry or other proceedings but only if such evidence appears to it to be essential for just decision of the case. In the case in hand, the file containing agreement is not essential for decision of the case filed under Section 138 of the Negotiable Instruments Act since petitioner has not denied the loan and also his signatures on the cheque which is subject matter of the said complaint.

So learned trial Court has rightly held that there is no requirement to lead the additional evidence by summoning the complete file of the loan agreement dated 31.08.2017. So the order passed by the learned trial Court is in accordance with the law and there is no illegality in the said order.

Petition stands dismissed.

(GURBIR SINGH)
JUDGE

01.06.2023
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Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*