

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

122

CRM-M-37479-2023

Date of decision: 02.08.2023

Suresh Beniwal

.....Petitioner

Versus

Yadvinder Singh Dhull

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kuldeep Sheoran, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is impugning the order dated 05.07.2023 passed by learned JMIC, Hisar (Annexure P-8) whereby an application (Annexure P-6) filed by the respondent-complainant was allowed and permission was granted to him to tender a fresh affidavit along with some documents in evidence.

2. Learned counsel appearing for the petitioner has vehemently argued that the Court below had gravely erred while passing the impugned order by failing to appreciate that it was merely a dilatory tactic adopted by the respondent-complainant to harass him and still further it was nowhere provided under any provision of the Cr.P.C. that an affidavit and documents once tendered in evidence could be taken back. He has submitted that in fact the respondent-complainant was just trying to fill in lacanua by filing additional affidavits and it could not be believed that the respondent-complainant, who was an educated man, would have tendered his affidavit Ex.CW-1/A without perusing the same.

3. I have heard learned counsel and perused the relevant material on record.

4. An application was moved on 30.05.2023 by the respondent-complainant with a prayer to allow him to take back his affidavit Ex.CW-1/A which was tendered on 30.05.2023, along with original documents Ex.C-5 and C-6, with permission to tender correct affidavit and documents in his evidence as inadvertently, while being cross-examined by the counsel for the petitioner-accused, the respondent-complainant realised that the documents pertaining to case No.2616 had been submitted. As per the respondent-complainant, the mistake occurred on account of the fact that there were as many as 04 cases pending between the parties, having the same title i.e. 'Yadvinder Singh Dhull Vs. Suresh Beniwal'.

5. On a perusal of the impugned order, it transpires that the respondent-complainant had filed the complaint in question bearing CIS No.NACT/2926/2019 on 02.11.2019 and tendered affidavit Ex.CW-1/A by way of preliminary evidence. On appearance, the petitioner accused moved an application under Section 145(2) of the Cr.P.C. for cross-examination of the respondent-complainant, which was allowed and thereafter the case was fixed for cross-examination of the respondent-complainant. On 30.05.2023, the respondent-complainant tendered his fresh affidavit Ex.CW-1/A along with documents Ex.C-5 and C-6. Learned counsel for the petitioner-accused thereafter cross-examined the respondent-complainant, however, the cross-examination could not be completed as the application in question was moved by the respondent-complainant. It is a matter of record and not disputed by the learned counsel for the petitioner that the parties are indeed involved in multiple litigations under Section 138 of

the NI Act and still further all the cases between the parties bear the same title i.e. 'Yadvinder Singh Dhull Vs. Suresh Beniwal'. It is also a matter of record and not disputed that the complaint No.2616 is also pending between the parties having the same title i.e.'Yadvinder Singh Dhull Vs. Suresh Beniwal'. The case number in hand is 2926. The affidavit Ex.CW-1/A tendered on 30.05.2023 shows that it pertains to the dishonour of cheque No.000015 dated 25.04.2019 whereas in the present case i.e. case No.2926, the cheque in dispute is cheque No.000007 dated 25.05.2019, hence, this Court concurs with the observations made by the Court below that it evidently was on account of an inadvertent error that a wrong affidavit Ex.CW-1/A had been filed in the Court.

6. The Court below cannot be faulted with as the application has been only partly allowed inasmuch as the applicant-complainant has not been permitted to withdraw the affidavit which already stands exhibited and he has been given permission to only file an additional affidavit as part of examination-in-chief and still further it has been categorically ordered by the Court below that the cross-examination of the complainant would be conducted as per the additional affidavit given.

7. This Court, in the above facts and circumstances, does not find any illegality in the impugned order. The instant petition being devoid of merit and the same is dismissed in *limine*.

02.08.2023

Vinay

(MANJARI NEHRU KAUL)

JUDGE

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