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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53901-2022
Date of decision: 14.12.2023

THE HISAR LEADING BANK CO-OPERATIVE

...Petitioner

VERSUS

KRISHAN KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. D. P. S. Jaura, Advocate
for the petitioner.

None for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. The present petition been filed under Section 482 of the Code of Criminal Procedure for quashing impugned order dated 20.10.2022 passed by the learned JMIC, Hisar, vide which the application of the petitioner/complainant-Society moved under Section 311 Cr.P.C. for producing documents as Exhibit P-15 has been dismissed.

2. Learned counsel for the petitioner submitted that it is a case where the petitioner-Society is a complainant and had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent-accused. He further submitted that the respondent-accused disputed the liability and for the purpose of proving the case of the petitioner-Society, the entire case is dependent upon the account statement i.e. Exhibit P-15. He also submitted that

earlier the same was produced before the learned trial Court but because of clerical error the entire statement could not be produced and thereafter, an application under Section 311 Cr.P.C. was filed but due to the oversight of the concerned Clerk of the petitioner-Society, the entire statement could not be produced and one more application under Section 311 Cr.P.C. was filed so as to prove the complete statement. He further submitted that since the present is a complaint under Section 138 of the Negotiable Instruments Act, 1881, the entire case depends upon the account statement because the respondent-accused is disputing the liability and the liability can be shown only on the basis of account statement and therefore, it goes into the root of the controversy. He further submitted that the scope of Section 311 Cr.P.C. is very wide and no prejudice will be caused to the respondent in case the aforesaid document, which is a vital document is again produced because earlier due to clerical errors of the concerned Clerk of the petitioner-Society, the same was not proved on record.

3. This Court had issued notice of motion in the present case on 20.01.2023 and also directed the learned trial Court to adjourn the matter pending before it, beyond the date fixed by this Court. Thereafter, the respondent was served and it was rather recorded on 17.08.2023 that the service is complete but none appeared on behalf of the respondent. Today also, when the matter was taken up nobody caused appearance on behalf of the respondent. Therefore, this Court would proceed on the basis of the record which is available and on the basis of the submissions made by the learned counsel for the petitioner.

4. The short point involved in the present case is that the petitioner-Society had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 and the complainant was examined and record Exhibit P-15 was also proved but it is the case of the learned counsel for the petitioner that the entire original record could not be proved at that point of time because of some clerical error on the part of the concerned Clerk of the petitioner-Society, who had come to the Court. The petitioner-Society therefore, filed another application under Section 311 Cr.P.C., which was declined by the learned trial Court on the ground that the matter is now at the argument stage.

5. This Court is of the view that the scope of Section 311 Cr.P.C. is very wide and at any stage, the aforesaid provision can be invoked in case the Court is satisfied that the subject matter of the documents sought to be produced and the witness recalled goes into the root of the controversy. In the present case, the aforesaid Exhibit P-15, which is sought to be proved in its entirety now, it is the statement of the petitioner-Society/complainant and has a direct bearing on the liability, is at all, of the respondent-accused. Therefore, in other words, the entire case of the parties would be dependent upon Exhibit P-15 and even if a second application under Section 311 Cr.P.C. was filed, the same could not have been disallowed only on the ground that it is a second application and the matter is fixed for arguments.

6. In view of the above, the present petition is allowed. The impugned order dated 20.10.2022 passed by the learned JMIC, Hisar is hereby set aside. The learned trial Court shall give one opportunity to the petitioner-Society to adduce its evidence pertaining to aforesaid statement of accounts Exhibit P-15

in accordance with law, subject to payment of costs of Rs.5,000/- to be paid by the petitioner-Society to the respondent.

14.12.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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