

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

I.

CRM-M-3775-2024

Reserved on : 20.3.2024

Date of Decision : 25.4.2024

Zeenie Gill Sandhu

.....Petitioner

Versus

Ashok Kumar Goyal @ Rajja

.....Respondent

II.

CRM-M-3771-2024

Zeenie Gill Sandhu

... Petitioner

Versus

Ashok Kumar Goyal @ Rajja

... Respondent

CORAM : HON'BLE MR. JUSTICE KARAMJIT SINGH

**Argued by :Mr. Navjot Singh, Advocate
for the petitioner.**

KARAMJIT SINGH, J.

This order will dispose of the afore titled two petitions.

CRM-M-3775-2024 is filed by the petitioner/accused against order dated

19.9.2023 (Annexure P-4) passed by the Court of Judicial Magistrate, 1st

Class, Sangrur whereby an application filed by the

respondent/complainant under Section 311 of Cr.P.C. has been allowed.

CRM-M-3771-2024 is filed by the petitioner against the order dated

22.12.2023 passed by the Court of Judicial Magistrate, 1st Class, Sangrur

whereby an application filed by the respondent/complainant under Section 65 of the Evidence Act has been allowed.

2. Brief facts of the case are that the respondent/complainant filed criminal complaint under Section 138 of Negotiable Instruments Act against the petitioner/accused alleging that the petitioner and her husband took loan of ₹ 24.5 lakh from the respondent, out of which, they repaid ₹ 15 lakh to the respondent and in order to discharge her liability, the petitioner issued cheque worth ₹ 9.44 lakh in favour of the respondent but the same was dishonoured with remarks, "Funds Insufficient". Then, the respondent sent statutory notice under Section 138 of Negotiable Instruments Act and thereafter, filed private criminal complaint wherein the petitioner was summoned as accused and notice of accusation was served to the petitioner and she did not plead guilty. The respondent filed an application under Section 311 of Cr.P.C. to prove and produce screen shots of the messages sent by the husband of the petitioner from his mobile phone No.98787-16418 to the complainant, when the criminal complaint was fixed for cross-examination of the respondent and his attorney both of whom were already examined-in-chief. The said application was contested by the petitioner. However, the learned trial Court allowed the said application vide order dated 19.9.2023 in the following terms : -

"Therefore, applicant/complainant is hereby allowed to prove and produce the screen-shots of the messages sent by the husband of the accused from his mobile No.98787-16418 to the complainant as no prejudice shall be caused to the accused as she will get an effective opportunity to controvert

the averments of the complaint. However, it is pertinent to mention here that allowing the applicant/complainant to prove and produce on record the alleged screen shots of the messages would not tantamount to allowing the complainant to file an amended affidavit and affidavit already tendered by the complainant on 28.09.2021 shall be read into evidence. Accordingly, present application stands disposed off. Now to come up on 29.09.2023 for cross-examination of CW1.”

3. Thereafter, the respondent filed another application under Section 65 of the Evidence Act to prove copies of the aforesaid screen shots of the whatsapp messages sent by the husband of the petitioner to the complainant by leading secondary evidence supported by certificate issued under Section 65-B of the Evidence Act as the original mobile phone wherein the aforesaid whatsapp messages were received is in possession of the complainant. The said application was also contested by the petitioner. The learned trial Court allowed the said application vide order dated 22.12.2023 in the following terms : -

“Learned counsel for the complainant has moved the instant application for allowing him to tender the screen shots of the chats along with certificate under Section 65-B of the Indian Evidence Act into complainant evidence. Per-contra, learned counsel for the accused has vehemently argued that application under Section 65 of Indian Evidence Act, is not maintainable. Perusal of the file reveals that earlier complainant was permitted to prove on record the alleged screen shots in accordance with law vide application under

section 311 Cr.P.C. which was allowed vide order dated 19.09.2023. Further, nomenclature of the provision cannot be permitted to subvert the ends of justice, especially when the contents of the application suggests otherwise. It is the substantial justice which shall be adhered to whenever pitted against technicalities of the law. In the instant case complainant has already been permitted to prove the screen shots in accordance with law. Therefore, complainant is hereby further permitted to tender into his evidence the screen shots in compliance of Section 65 B of Indian Evidence Act, along with the earlier affidavit. Application stands disposed accordingly. Case stands adjourned to 10.01.2024 for complainant evidence.”

4. The petitioner/accused being aggrieved by orders dated 19.9.2023 and 22.12.2023 has filed the present petition.

5. I have heard the counsel for the petitioner and gone through the concerned documents i.e. screen shots of the concerned whatsapp messages (Annexure P-7) (collectively).

6. Counsel for the petitioner has submitted that the criminal complaint is relating to dishonour of cheque issued by the petitioner in favour of the respondent. It is further submitted that the alleged screen shots of whatsapp messages sent by the husband of the petitioner to the complainant are not required for adjudication of the criminal complaint filed by the respondent against the petitioner under Section 138 of Negotiable Instruments Act. It has been further submitted that the said documents are not essential for rendering justice in the aforesaid criminal

complaint and that thus, the application filed by the respondent under Section 311 of Cr.P.C. deserves to be dismissed. It is further submitted that resultantly, the subsequent application filed by the respondent seeking permission to prove the concerned screen shots of whatsapp messages by way of secondary evidence is not sustainable.

7. I have considered the submissions made by the counsel for the petitioner.

8. For disposal of an application filed by the respondent/complainant under Section 311 of Cr.P.C., the determinative factor is whether the said electronic document (screen shots of whatsapp messages) are essential to the just decision of the case. There is no dispute that Section 311 Cr.P.C. confers wide power. However, the said power is to be exercised only for strong and valid reasons with great caution and circumspection.

9. From the perusal of the impugned order dated 19.9.2023, operative part of which is already reproduced above, it is apparent that the trial Court while allowing the application filed by the respondent under Section 311 of Cr.P.C. has specifically noted down that the scripts of the messages qua which the instant application has been filed are already given in the list of documents attached with the complaint. Copies of the said screen shots being secondary evidence is admissible in evidence subject to requirement of certificate as per provisions of Section 65-B of the Evidence Act as per the settled position of law as enumerated by Hon'ble Supreme Court in **Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and others** 2020 (3) RCR (Civil) 256.

10. In light of the foregoing reasons, both the petitions are

hereby disposed of with the observations that the electronic documents in question (Annexure P-7) being secondary evidence will be admitted in evidence of the respondent subject to provisions of Section 65-B of the Evidence Act with liberty to the petitioner to cross-examine the complainant with regard to authenticity of the said electronic documents and certificate, if any, submitted under Section 65-B of Evidence Act. However, it is made clear that evidentiary value and relevancy of the said electronic documents will be adjudicated by the learned trial Court at the time of final disposal of the case.

11. Observation, if any, made hereinabove is not to be construed as expression of opinion on merits of the case.

(KARAMJIT SINGH)
JUDGE

April 25, 2024
Paritosh Kumar