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

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Date of decision: 14th October, 2024

Mithu Ram

...Petitioner

Versus

Punjab National Bank

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ishan Gupta, Advocate for the petitioner.

MANISHA BATRA, J (ORAL):-

The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') challenging the order dated 28.08.2024 passed in Criminal Complaint bearing CIS No. NACT-652-2019 titled as 'Punjab National Bank vs. Mithu Ram' whereby an application filed by the petitioner-accused for summoning certain witnesses by way of his defence evidence has been partly allowed but the prayer for summoning a witness mentioned at clause C of para No.2 was rejected.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned complaint has been filed by the respondent-complainant against the present petitioner under Section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act') on the allegations that



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a cheque issued by present petitioner for a sum of Rs. 4,50,000/- on 02.07.2019 in the capacity of guarantor, had been dishonoured upon presentation. As per the further allegations, the petitioner had failed to discharge his legal liability of payment of amount of cheque despite being served with a notice and therefore, the aforementioned complaint has been filed. The case is at the stage of producing defence evidence. The petitioner had moved an application (Annexure P-6) seeking summoning of certain witnesses in the aforementioned complaint. By passing the impugned order, the learned trial Magistrate allowed the petitioner to summon the witnesses mentioned at serial No. A and B of para 2 of the application but rejected the prayer to summon concerned bank official of the respondent-complainant bank along with the documents as mentioned at serial No. C of the application by observing that the contents of the application were vague to the extent to which summoning of the aforementioned witness was concerned and by summoning such witness and seeking production of the said record, the petitioner wanted to fill up the *lacunae* in the case.

3. Feeling aggrieved by the order dated 28.08.2024, the present petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as by declining his prayer to summon bank official of the respondent-complainant Bank along with the record as mentioned in the application, the petitioner had been denied of an opportunity to prove his defence as well as innocence. No



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reasonable explanation has been given in the impugned order for dismissing the prayer made by the petitioner to that extent. The examination of witness mentioned at Sr. No. C of para 2 of the application as well as production of documents as mentioned therein, by the said witness is very much necessary for just decision of the case but this fact has not been taken into consideration by learned trial Magistrate. Accordingly, it is urged that the impugned order be set aside to the extent to which the prayer made by the petitioner for summoning witness mentioned at Sr. No. C was dismissed, the petition be allowed and an opportunity be given to the petitioner to summon the aforementioned witness with the relevant record.

5. I have heard learned counsel for the petitioner at considerable length besides perusing the material placed on record.

6. By moving the application (Annexure P-6), the present petitioner has sought summoning of concerned officials from the office of SSP, Sangrur and Police Station Dirba along with certain record. This prayer had been allowed by the learned trial Magistrate. The petitioner then made request for summoning of concerned bank official from the respondent bank along with certain record. Serial number C of para No.2 of the application is reproduced as under for the sake of convenience:-

'c. Concerned Bank official PNB Main Branch alongwith complete file regarding visit of bank official at Dirba under Dadagiri Scheme on 16.06.19, approval of Head Office regarding visit at the premises, copies of photographs of the visit, complete file of PNB regarding cases filed under SARFAESI Act against Garg Bearing Company Azimgarh,



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Nishant, Prince, Mithu Ram and Baisakhi Ram and guarantee deeds/document executed by aforesaid persons is favour of PNB, and all police complaints filed by PNB against aforesaid persons including application dated 11.06.19, 14.06.2019 and 28.06.2019 and record of application dated 27.06.2019 filed by M/s Surat Ram, Baisakhi Ram Dirba and Garg Bearing Company Dirba to Chief Manager Direct PNB, Governor RBI and specimen writing of Shammi Bansal and his signatures who was posed on 02.07.2019 in PNB and list of persons who were posted in loan department on 02.07.2019 in PNB along-with their specific writing and disclose name of person who issued memo of Bank to M/s Garg Bearing Company dated 03.07.2019 and his specimen writing and record of posting of Mr. Dogra w.e.f. 2013 to 2016 in PNB Main Branch Patiala Gate, Sangrur and along-with record of original cheques of series of following holder:-

- a. Original cheque book of series 340621 which was issued to Nishant Garg on 12.12.2013 by PNB.*
- b. Original Cheque book of series 634001 which was issued to Baisakhi Ram on 15.01.15 by PNB*
- c. Original Cheque book of series of **22201** which was issued on 01.10.13 of Mithu Ram by PNB*
- d. Original Cheque book of series of 633981 which was issued to Prince on 15.01.15 by PNB*
- e. Original deposit vouchers of four dishonoured cheques in question in all four complaints.'*

7. On a bare perusal of the above, it is explicit that by the petitioner wanted production of original cheque books of different numbers issued in the names of Nishant Garg, Baisakhi Ram, Prince and himself by

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the respondent bank on the different dates during the year 2013 and 2015. These original cheque books are obviously presumed to be in possession of the account holders and not in possession of the bank. Therefore, the prayer made in this regard was such that obviously could not have been allowed. That apart, he is shown to have made prayer for production of complete file regarding visit of some bank official at Dirba under some scheme, some approvals, photographs of the visit, file of the respondent-Bank regarding cases filed against the petitioner and some other persons as well as one concern under SARFAESI Act. This list is quite vague as neither it is mentioned as to what purpose was going to be served by getting that record produced nor it has been mentioned in the application as to how production of the said record was necessary for just decision of the case. Even during the course of arguments before this Court, learned counsel for the petitioner has not been able to clarify as to what bearing the proposed documents were having on the merits of the complaint as filed against the present petitioner. At the cost of repetition, it may be also mentioned that the original cheque books are presumed to be in possession of the account holders and the petitioner could not even ask the respondent bank to produce the same on record. The relief claimed by the petitioner for summoning an official from the respondent-complainant bank with the record as mentioned above was absolutely vague and could not be granted to the petitioner. Therefore, this Court finds no infirmity in the order as passed by learned trial Magistrate. As such, no ground has been made out for allowing the petition, the same is



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dismissed. It is, however, clarified that the petitioner shall be at liberty to produce defence evidence either by moving appropriate application before the learned trial Court or by summoning witnesses at his own in accordance with law.

8. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

14th October, 2024

Parveen Sharma

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| 1. Whether speaking/ reasoned | : | Yes / No |
| 2. Whether reportable | : | Yes / No |