IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

121 **CRM-M-62958-2024**
Date of decision: 16th December, 2024

Reema Aggarwal
...Petitioner

Versus

Navdeep Singh Boparai
...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Shrey Goel, Advocate for the petitioner.

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MANISHA BATRA, J (ORAL):-

The instant petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking quashing of order dated 25.10.2024 passed by the learned Judicial Magistrate First Class, SAS Nagar, Mohali in criminal complaint bearing NACT 374 of 2022 titled as 'Navdeep Singh Boparai Vs. Reema Aggarwal', whereby an application filed by the petitioner by him for de-exihbiting some documents, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the respondent-complainant has filed the aforementioned complaint against the present petitioner alleging that he had issued a cheque for a sum of Rs. 15,00,000/- in favour of the respondent which had been dishonored. The petitioner failed to make payment of the amount of cheque, thereby compelling the respondent to file the

aforementioned complaint. The petitioner has been ordered to be summoned as an accused and is presently, facing trial before the concerned Court. After cross-examining the respondent-complainant, he had moved an application before the learned trial Court (Annexure P-2), making prayer that two documents produced on record by the respondent-complainant in preliminary evidence i.e. agreement to sell and receipt of payment exhibited as exhibits C-1 and C-2 were inadmissible in evidence and therefore, these documents were liable to be de-exhibited. The learned Magistrate vide order dated 25.10.2024 observed that since mere marking of a document as exhibit did not dispense with the requirement of proof of the same and as the petitioner was to get opportunity to cross-examine the witness with regard to the authenticity of such documents, therefore, the application did not deserve to be allowed. It was also held that there was no provision for de-exhibition of any document which was produced in evidence.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law since learned trial Court while passing the same ignored the fact that during his cross-examination, the respondent-complainant himself admitted that the agreement to sell, which was exhibited as exhibit C-1 was typed on a plain paper and not on stamp paper and also that he had not purchased stamp paper. It is argued that even the receipt exhibit C-2 was not in terms of the provisions of Income Tax Act and therefore, for want of proper stamp, the document exhibited as exhibit C-1 and for want of proper proof, the receipt exhibit C-2 could not be considered to be documents duly admissible in evidence. It is argued that

these documents were wrongly marked as exhibits and in view of the submission as made above, they are liable to be de-exhibited. To fortify his arguments, learned counsel for the petitioner has relied upon ***'Sirikonda Madhava Rao Vs. N. Hemalatha and others' 2022 LiveLaw (SC) 970, 'Madan Mohan Lamba (since deceased, through his LR) Vs. Sudesh Kumar, 2015 SCC OnLine P&H 13971, 'Avinash Kumar Chauhan Vs. Vijay Krishan Mishra, (2009) 2 Supreme Court cases 532, Civil Revision No. 399 of 1985*** titled as ***'Dhan Prakash Gupta Vs. Jai Narain Goel',*** decided on ***25.07.1996*** by ***High Court of Delhi.***

4. I have heard learned counsel for the petitioner at considerable length besides going through the record and on perusal of the same, I am of the considered opinion that the petition does not deserve to be allowed. It is apparent from the record that an agreement to sell and one receipt, both dated 24.09.2021 were produced by the respondent-complainant in his preliminary evidence and they were exhibited as exhibit C-1 and exhibit C-2. The respondent-complainant appeared for subjecting him to cross-examination by the present petitioner and the same was conducted in detail. The sworn statement of the respnodent-complainant has been reproduced in para No. 5 of the present petition and on a perusal of the same, it is revealed that the respondent admitted that the agreement C-1 was typed on a plain paper and not on a stamp paper. It is on the basis of this admission, that the petitioner is stressing for de-exhibition to this document and so far as the exhibit C-2 receipt is concerned, the stand taken by the petitioner is that the same was in violation of the provisions of Income Tax Act. It might be so,

however, once these two documents were exhibited in preliminary evidence of the respondent-complainant, then no occasion for de-exhbiting them is made out as there is no such provision of law and it is a different matter altogether as to whether these documents are to be considered to be admissible in evidence at the time of final adjudication of the *lis* between the parties. The authorities which have been cited by learned counsel for the petitioner do not render any support in this regard. No illegality or infirmity is noticed in the order passed by the learned Courts below and accordingly, finding no reason to allow the petition, the same is dismissed.

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

[MANISHA BATRA]
JUDGE

16th December, 2024
Parveen Sharma

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