

(2018) 06 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : Cr. MMO No. 36 of 2018

Santosh Rana

APPELLANT

Vs

Kangra Co-op. Primary Agriculture & Rural Development Bank
Ltd. Santosh Rana

RESPONDENT

Date of Decision : 18-06-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 311, 313, 482
Negotiable Instruments Act, 1881 — Section 138

Citation : (2018) 06 SHI CK 0020

Hon'ble Judges : CHANDER BHUSAN BAROWALIA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Chander Bhusan Barowalia, J.

1. The present petition, under Section 482 of the Code of Criminal Procedure, is maintained by the petitioner, against the order, dated 12.01.2018,

passed by learned Judicial Magistrate 1st Class, Court No. III, Hamirpur, District Hamirpur, H.P. in Criminal Complaint No. 43-1/2015, whereby an

application under Section 311 Cr. P.C., filed by the petitioner for leading additional evidence has been dismissed.

2. The brief facts of the case are that in the month of January, 2008, the petitioner approached the respondent-bank for grant of loan of Rs.

14,00,000/- for installation of Green House, which was sanctioned by the respondent in his favour on 22.01.2008 as a term loan of Rs. 14,00,000/- with

interest @ 14% p.a. for a period of ten years and the monthly installment of said amount had come to Rs. 22,400/-. As per the respondent-bank, on

20.06.2015, the petitioner in order to discharge his liability, issued a cheque,

bearing No. 047446, drawn at Allahabad Bank, Branch at Hamirpur, H.P.

in favour of the respondent-bank. However, when the same was presented by the respondent in the bank, the same was dishonoured due to

insufficient fund. Consequently, the respondent-bank filed a complainant, under Section 138 of the Negotiable Instruments Act, against the petitioner

before the learned trial Court. During the pendency of the case the petitioner filed an application, under Section 311 Cr. P.C., wherein he prayed that

he may be allowed to recall the Manager, Kangra Co-op. Primary Agriculture & Rural Development Bank Ltd. alongwith the records regarding loan

sanctioned for green house, as the same was not brought by the Manager earlier. As per the petitioner, he only wants to prove that he has issued the

cheque only for the security purpose, not to discharge his liability. Thus, the said witness, alongwith the records qua loan sanctioned for green house, is

material and necessary for proper adjudication of the case. However, the learned trial Court vide order dated 12.01.2018, dismissed the application

filed by the petitioner, hence the present petition.

3. In reply, it has been averred by the respondent-bank that the petitioner did not pay even a single installment of the loan amount and when the

respondent-bank started auction process of the mortgaged land, which belongs to the petitioner, he issued a cheque, amounting ` 10,00,000/- in favour

of the respondent-bank, however the same was dishonoured due to insufficient fund. It has been further averred that the application filed by the

petitioner has rightly been dismissed by the learned trial Court, as despite number of opportunities afforded to him, he failed to lead evidence. Thus the

order passed by the learned trial Court needs no interference and the present petition deserves dismissal.

4. Learned counsel for the petitioner has argued that the learned trial Court has erred in holding that there are no grounds to allow the application for

additional evidence, however for proper adjudication of the case, the Manager, Kangra Co-operative Primary Agriculture & Rural Development Bank

Ltd., alongwith records was required to be examined. Hence, the present petition may be allowed and impugned order, passed by the learned trial

Court may be set aside. On the other hand, learned counsel for the respondent has argued that the application has been moved by the petitioner just

for delaying the proceedings, even otherwise, learned trial Court has granted six

opportunities to the petitioner to lead his evidence, so it cannot be said

that learned trial Court has erred in dismissing the application of the petitioner, thus the impugned order calls for no interference.

5. To appreciate the arguments of the learned counsel for the parties, this Court has gone through the records in detail.

6. Section 311 of the Code of Criminal Procedure, 1973 reads as under:

311. Power to summon material witness, or examine person present.- Any Court may, at any stage of any inquiry, trial or other proceeding under

this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any

person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be

essential to just decision of the case.

7. The purpose of this provision is to find out the truth in order to render a just decision. However, as the loan was taken by the petitioner and there is a

presumption attached to the issuance of cheque towards the repayment of the loan and the petitioner even after many opportunities granted to him

could not lead his evidence. So, the only purpose of filing the application for leading additional evidence, appears to be delaying the proceedings, as

CW-2 was not cross-examined by the petitioner on the facts of not producing the file pertaining to the loan earlier, so the application is afterthought

and to delay the proceedings, which cannot be allowed.

8. From the records, it is clear that the accused was having an opportunity to call for the records pertaining to the loan in his defence evidence, as the

complainant evidence was closed on 05.10.2016, statement of the petitioner under Section 313 Cr. P.C. was recorded on 18.11.2016 and thereafter

the matter was listed for defence evidence. Since 23.12.2016, almost six opportunities were granted to the petitioner to lead evidence, but he could not

lead his evidence and consequently, learned trial Court on 15.11.2017, closed his evidence.

9. From the conduct of the petitioner, it seems that he is only interested in delaying the proceedings, which is not the intent of the legislature behind the

framing of Section 311 Cr. P.C. So, this Court finds no infirmity with the order passed by the learned trial Court. Accordingly, the present petition,

which sans merits, deserves dismissal and is accordingly dismissed. Pending

application(s), if any, shall also stand(s) disposed of. Parties through their counsel are directed to appear before the learned trial Court on 18th July, 2018.