

IN THE HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE.

SINGLE BENCH : HON'BLE SHRI JUSTICE ALOK VERMA

MISCELLANEOUS CRIMINAL CASE NO.3808/2016

Sandeep Mishra S/o R.K.Mishra

Vs.

Abhishek Goyal S/o Premchand Goyal

Shri A.R.Khan, learned counsel for the applicant.

Shri N.S.Rathore, learned counsel for respondent.

ORDER

(Passed on this 2nd day of August, 2016)

This application filed under Section 482 Cr.P.C. is directed against the order passed by the learned Judicial Magistrate First Class, Indore dated 11.03.2015 in criminal case no.33311/2008 and the order passed by the revisional Court in Criminal revision no.213/15 dated 14.05.2015.

2. The relevant facts for disposal of this revision are that the present applicant is facing trial before the learned Judicial Magistrate First Class under Section 138 of the Negotiable Instruments Act.

3. According to the applicant this complaint was filed by uncle of the complainant Mahesh Agrawal. There are two complaints filed on the basis of same promissory note and stamp paper dated 26.11.2007 and on the basis of two cheques which have

consecutive numbers.

4. The applicant filed an application under Section 311 Cr.P.C. for recalling the complainant for further cross examination, as according to him no questions were asked from the complainant as to why two different complaints were filed on the basis of same promissory note.

5. Learned Judicial Magistrate First Class proceeded to dismiss the application and the revision filed against this order was dismissed by the learned XI Additional Sessions Judge, on the basis of the principles laid down in the case of **Sethuraman Vs. Raja Manikam (2009) 5 SCC 153** in which the Hon'ble Apex Court held that revision against the order disposing of application under Section 311 Cr.P.C. is not maintainable. Accordingly, after failing to get any relief in revision, this application under Section 482 Cr.P.C. is filed.

6. Learned counsel for the applicant submits that under the provisions of Section 311 Cr.P.C., respondent cannot be allowed to fill the lacuna in his case. Only in case of severe injustice, additional evidence may be allowed.

7. Learned trial Court observed in the impugned order that the fact that both the complaints were filed on the basis of same set of documents was known to the applicant/accused and it was not a subsequent event and therefore dismissed the application.

8. Learned counsel for the applicant cited judgment of Hon'ble Apex Court in the case of **Vijay Kumar Vs. State of**

Uttar Pradesh (2011) 8 SCC 136, Shailendra Kumar Vs. State of Bihar (2002) 1 SCC 655, Natasha Singh Vs. Central Bureau of Investigation (2013) 5 SCC 741. The principles laid down in these cases are that the issue to be considered is whether the evidence adduced is relevant or not.

9. Per contra, learned counsel for the respondent relies upon a judgment of Hon'ble the Apex Court in the case of **Advocate General Vs. Shiv Kumar Yadav (2015) 4 CCSC 2164 (SC).**

In this case, it was held that recalling the witnesses, observing merely that, for ensuring fair trial such recalling of the witnesses is necessary, is not enough. There should be some relevant ground to justify recalling of the witnesses.

10. In the present case, it is rightly observed by the learned trial Court that the accused was knowing the fact that both the complaints were filed on same set of documents and on the basis of cheques having consecutive numbers, full opportunity was granted to the accused for cross examining the complainant and therefore, he rightly dismissed the application. In the considered opinion of this Court discretion exercised by the learned lower Court does not suffer from any infirmity, illegality or irrationality.

No interference is called for and therefore, this petition being devoid of merits is dismissed.

C.C.as per rules.

(ALOK VERMA)
JUDGE

RJ/