

Punjab And Haryana High Court

Gurvinder Singh Gill, J

M/s Prince Layer Cum Hatchery Farm And another – Appellant,

versus

Sanjeev Aggarwal – Respondent.

Criminal Miscellaneous Petition (M) No. 13457 Of 2019 (O&M)

04.04.2019

Negotiable Instruments Act, 1881 — Section 138, 145 - There is no bar under the law thereby restraining the complainant to place on record the documents as well as detailed affidavit during trial in his evidence and the evidence tendered at pre-summoning stage is for the Court to make an intent as to whether all the necessary ingredients under [Section 138](#) of the N.I. Act have been fulfilled or not at prima facie, which cannot debar the complainant from filing the fresh affidavit in post summoning stage.

Prasoon Kumar, Advocate

Judgement

1. The petitioners have approached this Court challenging order dated 27.2.2019 passed by learned Judicial Magistrate 1st Class, Sonapat, Haryana, whereby the learned trial Court has held that the complainant, post the summoning of the accused, has a right to file a fresh affidavit towards his examination-in-chief, while turning down the objections raised by the accused in this regard.

2. A few facts, necessary to notice, are that the respondent had filed a complaint under Sections 138 and 141 of Negotiable Instrument Act, 1881 against the petitioners in the year 2010 before the Metropolitan Magistrate, Rohini Courts, Delhi on account of dishonour of a cheque bearing No.800207 dated 15.1.2010 for an amount of Rs. 1 lac, wherein the complainant tendered his affidavit in preliminary evidence (annexed with the complaint as Annexure P-2). Vide order dated 5.4.2010 (Annexure P-3) passed by Metropolitan Magistrate, Rohini Courts, Delhi, the accused were summoned. Pursuant to summoning of the accused, the accused moved an application under Section 145(2) of Negotiable Instrument Act, 1881, which was accepted vide order dated 2.5.2012 (Annexure P-4) passed by Metropolitan Magistrate, Rohini Courts, Delhi. Subsequently, on account of the amendment in Negotiable Instrument Act, 1881 pertaining to territorial jurisdiction for entertainment of the complaint, the complaint was transferred to the Court of Chief Judicial Magistrate, Sonapat vide order dated 30.9.2015 (Annexure P-6) passed by Metropolitan Magistrate, Rohini Courts, Delhi.

3. Before the matter had been transferred to Sonapat, the complainant had filed an affidavit dated 14.7.2014 (Annexure P-7) towards his examination-in-chief in the post summoning evidence. However, it appears that it was after the matter stood transferred to Sonapat that some objection was raised against tendering of the aforesaid affidavit by the complainant, which has been turned down by the learned trial Court vide impugned order dated 27.2.2019.

4. The learned counsel for the petitioner has submitted that the complainant cannot be permitted to re-open the case and cannot be permitted to file a fresh affidavit along with additional documents especially since the accused in their application filed under provisions of Section 145(2) of Negotiable Instrument Act, 1881 had already disclosed their defence. The learned counsel, in order to hammer forth his aforesaid submission, places reliance upon a judgment of Delhi High Court reported as (2010-4)160 PLRD 33, titled as *Rajesh Agarwal v. State and another*.

5. I have heard the learned counsel for the petitioners.

6. Section 143 of Negotiable Instrument Act, 1881 prescribes that the offences under Sections 262 to 265 of Cr.P.C. are to be tried summarily and that the Magistrate is competent to impose punishment of imprisonment not exceeding one year. It is further provided therein that if at the commencement of the trial or in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment exceeding one year may have to be passed or it is otherwise undesirable to try the case summarily, the Magistrate after hearing the parties may pass an order to this effect.

7. Section 143 of Negotiable Instrument Act, 1881 specifically states that provisions of Section 262 to 265 Cr.P.C. as far as may be applied to the trials under Negotiable Instrument Act, 1881.

8. Section 262 Cr.P.C. reads as follows:-

"262. Procedure for summary trials:-

(i) In trials under this Chapter, the procedure specified in this Code for the trial of summons-case shall be followed except as hereinafter mentioned.

(ii) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter."

9. A perusal of the aforesaid Section shows that the procedure specified for the trial of summons case is to be followed for holding the summary trial. Section 254 Cr.P.C. mandates that in a summons case after the substance of accusation has been stated to the accused and the accused does not plead guilty, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the case of prosecution. In any case, there is nothing to suggest that once the complainant furnishes his affidavit at pre-summoning stage, he has to remain confined to the said affidavit and

that he cannot tender any further evidence or that he cannot step into the witness-box to get his examination-in-chief recorded. The complainant may not choose to lead his entire evidence at the stage of pre-summoning evidence. It would certainly be hazardous to hold that a complainant cannot lead further evidence post his summoning for elaborating upon his pre-summoning evidence. In the judgment cited by the learned counsel for the petitioner i.e. *Rajesh Agarwal's case* (supra), no doubt it has been observed that the affidavit tendered by the complainant in his preliminary evidence shall be read by the Court at post summoning stage and the complainant need not be recalled and is not required to be examined afresh unless on an application filed by the accused under Section 145(2) of Negotiable Instrument Act or the Court suo moto chooses to summon him again. The relevant extract from the cited judgment reads as follows:-

"5. In order to ensure that the cases under Section 138 N.I. Act are tried before the Court of MM/JM in an expeditious manner, Legislature provided for summary trial. Section 145 of N.I. Act provides that evidence of complainant may be given by him by way of affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the court. This also makes clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage.

The complainant is not required to be recalled and re-examined after summoning of accused unless the MM pass a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of N.I. Act suo moto by the Court. Section 145 of N.I. Act reads as under:- 145. Evidence on affidavit -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

10. The aforesaid observations were made by Delhi High Court while highlighting the underlying object of the Act i.e. conducting an expeditious trial in respect of offences under Section 138 of Negotiable Instruments Act, wherein as per the procedure provided especially for summary trial, the complainant is not required to be called again and his earlier affidavit can be read in evidence even in the post summoning stage. The idea was that the Court should not insist upon fresh examination of the complainant when the accused puts in appearance and his affidavit tendered earlier i.e. even in the absence of the accused may be taken as his evidence. However, the aforesaid observations cannot be interpreted to mean that the right of the complainant is curtailed and he is precluded from

filing a more elaborate affidavit. There certainly can be no illegality if the complainant chooses to file a detailed affidavit in the post summoning stage. Needless to mention, in case there are any contradictions or material improvements in the subsequent affidavit tendered by the complainant, the accused can always highlight the same at appropriate stage and take advantage of such contradictions or material improvements.

11. In view of the discussion made above, this Court does not find any ground to interfere in the impugned order dated 27.2.2019 passed by learned Judicial Magistrate 1st Class, Sonapat, Haryana and the same is hereby upheld. However, since the trial has been pending since the year 2010, the trial Court is directed to take effective steps for expediting the conclusion of trial.