

(2013) 01 RAJ CK 0270

Rajasthan High Court

Case No: Criminal Miscellaneous Petition No. 3401 of 2012

Vijai Singh Kulhari

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision: Jan. 17, 2013

Hon'ble Judges: R.S. Chauhan, J

Bench: Single Bench

Advocate: V.K. Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

R.S. Chauhan, J.

The petitioner, Vijay Singh Kulhari is aggrieved by the order dated 7.5.2012 passed by the Additional Chief Mahanagar Magistrate No. 8, Jaipur Metropolitan whereby he has rejected the application filed by the petitioner u/s 91 read with Section 311 Cr.P.C. He is also aggrieved by the order dated 30.06.2012 passed by the Additional Sessions Judge (Fast Track) No. 3, Jaipur Metropolitan whereby the learned Judge has upheld the order dated 7.5.2012. In brief, the facts of the case are that for two cheques have given by the petitioner to the complainant Mr. Sharad Mehta, which had bounced. Mr. Sharad Mehta had instituted a complaint against the petitioner for offence u/s 138 Negotiable Instrument Act. During the course of the trial, the complainant and the petitioner had entered into an agreement on 28.07.2009. Both the parties had agreed that the petitioner would give three cheques, total Rs. 49,00,000/-, to Mr. Sharad Mehta. Moreover, a piece of land would also be given by him to Mr. Sharad Mehta.

2. The petitioner moved an application u/s 91 Cr.P.C. read with Section 311 Cr.P.C. He prayed that a copy of the agreement dated 28.07.2009 should be called for. Moreover the complainant should be recalled for so that he can be cross-examined with regard to the agreement dated 28.07.2009. However, by order dated 7.5.2012, the learned Magistrate dismissed the petitioner's application. Since the petitioner was aggrieved by the aforesaid order, he filed a criminal revision petition before the

learned Judge. But by order dated 30.06.2012, the learned Judge dismissed the revision petition and upheld the order dated 7.5.2012. Hence, this petition before this Court.

3. Mr. V.K. Sharma, the learned counsel for the petitioner has raised the following contentions before this Court:-

Firstly, both the parties had entered into an agreement dated 14.09.2006. Consequently, two cheques were given, which were ultimately dishonored by the bank. Subsequently, on 28.07.2009 both the parties entered into an agreement. Three cheques were given in pursuance of the said agreement. But they, too, have been dishonoured, against which a separate complaint has been filed by the complainant respondent. However, according to him the agreement dated 28.07.2009 is relevant for the present controversy. Therefore, the learned Magistrate has committed an illegality in not summoning the said agreement and in not taking it on record. Moreover, since the agreement was relevant, an opportunity to cross-examine the complainant should have been given to the petitioner. While assailing the order dated 30.06.2012, the learned counsel has contended that the revision petition has been dismissed on the ground of maintainability and not on merit. Therefore, the case should be remanded back to the learned Judge.

4. Heard the learned counsel for the petitioner and perused the impugned order.

5. It is, indeed, a settled principle of law that only those facts and documents should be admitted which are relevant to the controversy. A fact or document which does not shed light on the controversy, and does not help to reach the truth, or a document which is irrelevant should not be summoned or taken on record.

6. Admittedly, the parties had entered into an agreement on 14.09.2006, pursuant to which the two cheques in dispute were given by the petitioner to the complainant respondent. Allegedly both the cheques were dishonoured by the bank. Consequently, the complainant filed a case for the offence u/s 138 of the Act. Although both the parties may have entered into an agreement on 28.07.2009, the fact remains that according to the learned counsel for the petitioner the said agreement could not be implemented by the parties for a few reasons: firstly, because the three cheques given in pursuance of the said agreement have allegedly bounced and a separate complaint has been filed with regard to the three cheques. Secondly, some dispute has erupted between the parties with regard to the land which was to be given by the petitioner to the complainant respondent.

7. Since the agreement dated 28.07.2009 has never been implemented properly, obviously, it has no bearing on the question whether the set of two cheques given by the petitioner to the complainant have been dishonoured or not, and whether he is liable to pay the amount due therein to the complainant or not. Hence the agreement in question is absolutely irrelevant to the controversy before the learned trial Court.

8. Since the agreement is irrelevant, there was no occasion for the learned trial Court to allow the application u/s 91 Cr.P.C. Moreover, once the agreement is irrelevant, the question of permitting further cross-examination of the complainant by invoking the powers u/s 311 Cr.P.C. does not even arise.

9. It is equally well settled that a revision petition does not lie against an interlocutory order. Obviously, the order dated 07.05.2012 is an interlocutory order. Therefore, the learned Judge was justified in concluding that the revision petition was not even maintainable. Once a Court has come to the conclusion that petition is not maintainable, there is no need for the Court to go into the merits of the case. The petition could be dismissed on the sole ground of non-maintainability.

10. Hence, this Court does not find any illegality and perversity in the impugned orders. Thus, the petition is, hereby, dismissed. The stay application is also dismissed.