

**IN THE HIGH COURT OF HIMACHAL PRADESH**  
**SHIMLA**

**Cr.MMO 113 of 2007**

**Date of decision: 30.04.2008**

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Manmohan.

Petitioner.

Versus

Om Chand

Respondent.

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*Coram*

**The Hon'ble Mr. Justice V.K.Ahuja, J.**

*Whether approved for reporting<sup>1</sup>? No.*

**For the petitioner:           G.R.Palsra, Advocate..**

**For the respondent:       None.**

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**V.K.Ahuja, J(Oral)**

Heard.   The petitioner has filed the present petition under Section 482 Cr. P.C. read with Article 227 of the Constitution for setting aside the order passed by the learned Addl. District Judge, Mandi dated 18.9.2007, vide which, he upheld the order passed by the learned trial Court dismissing the complaint filed by the petitioner as not maintainable.

Briefly stated, the facts of the case are that a complaint under Section 138 of the Negotiable Instruments Act was filed by the petitioner before the learned trial Court. In his evidence, the petitioner examined himself only as complainant and after considering the statement of the petitioner, the learned trial Court dismissed the complainant as not maintainable and declined to issue notice to the respondent. The said order was upheld by the learned appellate Court on revision.

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Whether the reporters of Local Papers may be allowed to see the Judgment? Yes.

The petitioner has filed an application for leading additional evidence under Section 311 Cr.P.C. being Cr. M.P.No.238 of 2008 alleging that inadvertently the petitioner gave the date of presentation of cheque as 30.4.2005 and there is a stamp and date of the Bank on the cheque as 25.4.2005. Thus, it was alleged that the learned trial Court considered the date of presentation of the cheque as 30.4.2005 and accordingly held that since the cheque was presented beyond six months, the complaint was dismissed. The petitioner by means of this application, wants to examine an official from the Bank to prove the date of presentation of cheque as 25.4.2005, which according to him, will prove that the cheque was presented well within a period of six months.

Keeping in view the facts of the case, the present application is allowed and the orders passed by both the Courts below are set aside. The learned trial Court shall give an opportunity to the petitioner to examine himself again if he deems it necessary and also examine an official from the Bank to clarify the date of presentation of the cheque and thereafter the learned trial Court shall pass appropriate orders in the matter.

With these observations, the petition is allowed and the petitioner is directed to appear before the trial Court on 30.5.2008 and the learned trial Court shall proceed with the case in view of the observations made above. Copy of the order alongwith record be sent to the learned trial Court. CMP No.238 of 2008 shall also stand disposed of accordingly.

30<sup>th</sup> April, 2008  
(SDS)

(V.K.Ahuja),J.