

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CRM(M) 279/2024 CrIM(694/2024)

ROUF AHMAD BABA ...Petitioner(s)/appellant(s)

Through: Mr. Mir Javid, Advocate

Vs.

MANZOOR AHMAD RAH ...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
31.05.2024

Oral:

1. Through the medium of the instant petition, the petitioner has invoked the inherit power of this Court enshrined under Section 482 Cr.P.C seeking quashment of orders dated 29th August, 2023 & 28th November, 2023 passed by the Court of JMIC/Sub Registrar, Srinagar in complaint titled as “**Manzoor Ahmad Rah Vs. Rouf Ahmad Baba**”.
2. The facts emerging from the record would reveal that the respondent herein filed a complaint under Section 138 of the Negotiable Instruments Act 1881, against the accused petitioner herein pertaining to two cheques being 965769 and 965770 dated 10.12.2019 and 11.12.2019 respectively amounting to Rs. 4 lacs each which cheques for encashment purportedly had been issued by the accused petitioner to the complainant respondent herein and after presentation of the said cheques had got bounced, the complaint in question had been filed by the complainant/respondent herein and

after entertaining the said complaint, the Magistrate had taken cognizance thereof and summoned the accused petitioner in terms of order dated 27th January, 2020 and thereafter recorded the statement of the accused petitioner under Section 242 Cr.P.C, and on the basis of the said statement, wherein the accused petitioner had admitted the issuance of cheques to the complainant/respondent herein in discharge of a debit, but had pleaded that the amount covered by the cheques had been earlier paid to the complainant/respondent herein and although the Magistrate had initially directed the complainant/respondent herein to lead evidence in the matter, the accused petitioner herein thereafter instead came to be directed by the Magistrate to lead evidence in terms of order dated 16th April, 2022, whereupon the accused petitioner produced two witnesses which were cross examined as well by the counsel for the complainant/respondent herein and consequently in terms of order dated 29th August, 2023, the right of the accused petitioner to lead evidence came to be closed at the instance of the counsel for the accused petitioner, whereafter the complainant/respondent herein came to be directed by the Magistrate to lead evidence which, however, came to be opposed by the counsel for the accused petitioner herein on the ground that after leading his evidence as a accused in the complaint, the complainant/respondent herein cannot be permitted to lead his evidence and after taking into consideration the said objection of the counsel for the accused petitioner herein, the Magistrate allowed the complainant/respondent herein to lead evidence in terms of orders dated 29th August, 2023 and 28th November, 2023.

3. The accused petitioner herein has questioned impugned orders primarily on the ground that the Magistrate could not have permitted complainant respondent herein to lead evidence after the accused petitioner herein had evidence in the first instance instead of the complainant respondent herein.

Heard learned counsel for the petitioner and perused the record.

4. Perusal of the record reveals that the Magistrate in terms of order dated 16th April, 2022 directed the accused petitioner herein was directed by the Magistrate to lead evidence and the accused petitioner without objecting to the same or joining an issue thereof including that it is the complainant/respondent herein who has to lead evidence in the first instance before leading his evidence, consented to the leading of his evidence in the first instance and thereafter even consented to the closure of his evidence. In presence of the said admitted position, the accused/petitioner herein cannot now dispute that the Magistrate ought to have directed the complainant respondent herein to lead evidence in the first instance and that the Magistrate cannot permit the complainant/respondent herein to lead evidence now after the accused petitioner had led his evidence, in that, on any ground including that the defense available to the accused petitioner have had got exposed and same is likely to be exploited by the complainant/respondent herein while leading his evidence

The contention raised by the accused petitioner is legally untenable and misconceived in view of the fact that the accused petitioner have had disclosed his defense earlier before leading of evidence while getting his statement recorded under Section 242

Cr.P.C. Even otherwise as well, the leading of the evidence by the complainant/respondent herein now would not cause any kind of serious prejudice to the rights and interest of the accused petitioner herein, in that, the accused petitioner would have a chance to cross examine the witness those may be produced by the complainant/respondent herein and contradict the said evidence.

It is cardinal principle of law of evidence that the best evidence must be brought before the Court by the parties in order to enable the court to decide the issues involved in a case effectually and conclusively.

Thus, this Court is of the opinion that the complainant/respondent herein cannot be divested of his right to lead evidence in the matter and that the Magistrate cannot be aid to have faulted in this regard.

5. **Viewed thus**, this Court is not inclined to interfere with the impugned orders. Resultantly, the petition fails and is accordingly **dismissed**.

(Javed Iqbal Wani)
Judge

SRINAGAR
31.05.2024
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