

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M 12578 of 2015

Date of decision : 22.04.2015

Virpal Dhingra

....Petitioner

V/s

Gourav Bansal

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. Vivek Salathia, Advocate for the petitioner.

RAJAN GUPTA J.

Petitioner has impugned order passed by Judicial Magistrate Ist Class, Malerkotla whereby his application under section 311 Cr.P.C. has been rejected by the trial court.

Learned counsel for the petitioner submits that order suffers from illegality. Accused has right to seek recall of the complainant for further cross-examination. However, trial court has rejected his plea without considering provisions of section 311 Cr.P.C. in correct perspective. He has relied upon judgments reported as *P. Sanjeeva Rao vs. State of A.P. 2012(3) RCR (Criminal) 653* and *Natasha Singh vs. CBI (State) 2013(3) RCR (Criminal) 368*. He contends that section 311 Cr.P.C. ought to be liberally interpreted as has been held in *P. Sanjeeva Rao's* case (supra) and other similar judgments.

I have heard learned counsel for the petitioner and given careful thought to the facts of the case.

It appears that complainant filed a complaint under section 138 of the Negotiable Instrument Act, 1881 alleging that three cheques issued by the petitioner had been dishonored due to

insufficient funds in account of the petitioner. Thus, offence under section 138 of the Act had been committed. In examination-in-chief, complainant filed his affidavit. On 28.10.2014, he was subjected to lengthy cross-examination by counsel for the petitioner. Thereafter, trial proceeded and statement under section 313 Cr.P.C. was also recorded. As trial neared its culmination, petitioner moved instant application under section 311 Cr.P.C. for recalling the complainant on the ground that certain relevant questions could be put to the complainant. Same has been rejected by the court below. In my considered view there is no ground to interfere with the order passed by the trial court. Admittedly, case is fixed for arguments tomorrow i.e. 23.04.2015. A perusal of the application filed by the petitioner under section 311 Cr.P.C. makes out no case for recalling the witness for cross-examination. Said witness was cross-examined regarding all aspects of the matter on 28.10.2014. There can be no dispute with regard to proposition of law as laid-down in judgments in *P. Sanjeeva Rao's* case and *Natasha Singh's* case (supra). However, in the instant case, petitioner has hardly made out any ground for invoking section 311 Cr.P.C. Needless to observe that accused can raise all his pleas in the arguments on the basis of evidence, particularly cross-examination of complainant, already on record. Thus, judgments cited before this court cannot help the case of the petitioner. Besides, matter is now fixed for arguments tomorrow itself. No case for interference in inherent jurisdiction of this court is made out. Dismissed.

April 22, 2015

Ajay

(RAJAN GUPTA)
JUDGE