

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

**Criminal Misc. No. M-18094 of 2015
Date of Decision:-28.5.2015**

Gurmeet Kaur

...Petitioner

Versus

Harbhajan Singh

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

- 1. Whether reporters of local newspapers may be allowed to see judgment?*
- 2. To be referred to reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Present:- Mr. Ranjit Sharma, Advocate
for the petitioner.

HARI PAL VERMA J.(Oral)

The petitioner has filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 19.5.2015 (Annexure P-5) passed by Sub Divisional Judicial Magistrate, Khadoor Sahib, District Tarn Taran, whereby application under Section 311 Cr.P.C. for recalling of the witness has been dismissed.

As per the case of petitioner, she is working as Auction Recorder in the office of the Market Committee, Khadoor Sahib. Being an employee of the Market Committee, she is required to visit the office of the Sub Divisional Magistrate, Khadoor Sahib, where she came in the contact of Harbhajan Singh-respondent. The petitioner is a widow and,

therefore, taking advantage of her this position, respondent developed relations with her. Respondent has told the petitioner that his wife has already died and made promise with her, to which petitioner trusted. In December 2002, respondent took the petitioner to the house of his relative Mr. Raju resident of Village Matharawal, Tehsil Khadoor Sahib, where he committed rape upon the petitioner against her wishes. She was compelled to marry with the respondent. The respondent asked the petitioner that he want to buy an Alto Car for which he asked to give Rs.50,000/- in advance and also a cheque book. The respondent got blank cheque signed from the petitioner on the pretext that he had good relation with the Manager of Bank of India and shown the quotation of the car. The signature of the petitioner on the blank papers along with stamp papers and photographs were also obtained. The petitioner was taken at Village Sarli, where again rape was committed upon her and her nude photographs were taken by the respondent. Thereafter, respondent started blackmailing the petitioner with threat that in case she disclose anything to anyone, he will show her nude photographs to the relative of the petitioner. For this blackmailing he started taking the salary of the petitioner. He neither bought the Alto car nor returned Rs.50,000/-. Even the blank stamp papers signed by the petitioner were never returned to the petitioner. Again 2-½ tolas of gold ornaments were taken from the petitioner with the assurance that he will return the blank cheque, nude photographs and signed papers, but the petitioner has not been returned the cheque, photographs and signed papers. Rather, petitioner filed a complaint under Section 138 of the Negotiable Instruments Act, 1881

(hereinafter called 'the Act').

In the complaint, filed under Section 138 of the Act, it was alleged that the petitioner has taken Rs.2,00,000/- from the respondent for the purpose of sending her son abroad and she gave post dated cheque to him. The said cheque was presented in the bank on 7.11.2013 but was dishonoured with the remarks 'Insufficient Fund' In the pending proceedings under Section 138 of the Act, the petitioner Gurmeet Kaur has filed an application under Section 311 Cr.P.C. for recalling the evidence with a prayer that the respondent-complainant Harbhajan Singh, who has appeared as CW1, could not properly be cross-examined on certain material aspects by the counsel for the petitioner-accused due to lack of briefing by the accused to his counsel. Therefore, proper cross-examination of the complainant was necessary.

The respondent filed reply to the said application and contested the same on the ground of its vagueness. The proceedings under Section 138 of the Act are of summary trial in nature. The petitioner had got enough opportunity to examine the respondent-complainant and she has availed those opportunities.

Learned counsel for the petitioner submits that evidence in the case was recorded and the complainant was examined, but the documents i.e. FIR version and complainant version could not be put to the complainant by her counsel whereas these were essential for brought on record the true facts for the just decision of the case. It is, in these circumstances, application under Section 311 Cr.P.C. was filed and proper cross-examination of the complainant was necessary.

He further argued that the complainant is required to be further cross-examined, but the trial Court dismissed the application with the observation that the complainant-respondent-Harbhajan Singh was cross-examined on 31.03.2015 in length and what has been stated in the application was not put to the complainant.

I have heard learned counsel for the petitioner and find that there is no substance in the argument as raised by him. The application under Section 311 Cr.P.C. for recalling the complainant as witness for his cross-examination on the ground that he could not be properly cross-examined on certain material aspects which are recently disclosed by the accused to his counsel, are totally misconceived. Complainant-respondent, namely, Harbhajan Singh was cross-examined on 31.03.2015 at great length, but nothing has been disclosed by the petitioner or his counsel that on which aspects the respondent-complainant is required to be cross-examined, and such aspects were not earlier in their knowledge. The filing of such application is nothing but an attempt to prolong the litigation despite the fact that the proceeding under Section 138 of the Act are summary in nature.

In view of the above, I find no merit in the case and hence, the present petition is dismissed.

May 28, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE