

Crl. Misc. No. M-2778 of 2015

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

Crl. Misc. No. M-2778 of 2015 (O&M)

Date of decision: 26.05.2015

Ravinder Mohan

....Petitioner

Versus

Ashok Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. Gurmeet Singh, Advocate, for the petitioner.
Mr. Pushpinder Kaushal, Advocate, for the respondent.

PARAMJEET SINGH, J. (ORAL)

With the consent of the learned counsel for the parties, date is pre-poned and case is taken up for final hearing today.

Instant criminal petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the order dated 09.10.2014 (Annexure P-3) passed by learned Sub Divisional Judicial Magistrate, Khanna, whereby application of the petitioner for recalling the respondent/complainant for cross-examination has been dismissed.

Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner on the ground that in the year 2010 petitioner had taken a loan of ₹ 3,95,000/- from the respondent. On demand of loan amount, respondent issued postdated cheque No.18623 dated 05.12.2012 drawn

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on Axis Bank Branch Khanna for ₹ 3,95,000/- in favour of the respondent. However, the said cheque was returned by the bank along with memo dated 06.12.2012 with endorsement "Funds Insufficient". Respondent/complaint also served a legal notice dated 17.12.2012 upon the petitioner. Thereafter the complaint in question was filed by the respondent. On 24.04.2014, CW2 respondent/complainant was present and his examination-in-chief was recorded by way of affidavit and his cross-examination was deferred for 17.07.2014. On 17.07.2014, in view of the judgment of the Hon'ble Supreme Court in ***Indian Banks Association v. Union of India***, CWP No.18 of 2013 decided on 21.04.2014, trial Court passed the order that summary procedure is to be adopted in cases under Section 138 of the Negotiable Instruments Act and fixed the case for defence evidence for 14.08.2014. Petitioner moved an application under Section 145(2) of the Negotiable Instruments Act to allow the petitioner/accused to cross-examine the respondent/complainant. The application has been dismissed vide impugned order dated 09.10.2014. Hence, this petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that cross-examination of the respondent/complainant is necessary for the just decision of the case and opportunity may be given to the petitioner to cross-examine the respondent. Trial Court has mis-interpreted the terms of the judgments of the Hon'ble Supreme Court in ***Indian Banks Association*** (supra).

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On the other hand, learned counsel for the respondent submits that he has no objection if the petition is allowed and petitioner be given opportunity to cross-examine the respondent, however, prays that trial Court may be directed to dispose of the complaint as early as possible. He has also moved CRM No.15432 of 2015 in this regard, which is duly supported by affidavit of the respondent.

I have considered the contentions raised by learned counsel for the parties.

Cross-examination is the most powerful tool for discovery of truth. The veracity of witness can be tested only by cross-examination. It is necessary for the ends of justice and to elicit truth from the witness. Keeping in view the facts and circumstances of this case and the consent given by the respondent, this Court deems it fit and appropriate that ends of justice would be met if one effective opportunity is granted to the petitioner to cross-examine the respondent/complainant. Ordered accordingly.

In view of above, impugned order dated 09.10.2014 (Annexure P-3) passed by learned Sub Divisional Judicial Magistrate, Khanna, is set aside. The revision petition is disposed of in above terms. However, trial Court is directed to dispose of the complaint within a period of three months from the date of receipt of certified copy of this order.

(Paramjeet Singh)
Judge

May 26, 2015
R.S.