

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-4629 of 2015
Date of Decision: February 23, 2015

Joginder Singh

.....Petitioner

Vs.

Anurag Malik

.....Respondent

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Rakesh Dhiman, Advocate for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Petitioner is facing proceedings under Section 138 of the Negotiable Instruments Act in case of a dishonoured cheque of Rs.12.50 lacs. An application under Section 311 Cr.P.C. read with Section 145 (2) Cr.P.C. of the Negotiable Instruments Act, for short 'the Act', for recalling the complainant for re-examination has been dismissed vide impugned order. A perusal of the application and impugned order indicates that the petitioner has vaguely pleaded in the application that he had found some sound evidence against the complainant which is necessary to be placed on record by recalling the complainant and cross-examining him.

On asking of the Court, counsel for the petitioner has submitted that defence evidence is being produced by the petitioner to establish that the

cheque had not been given to discharge any liability but it was a measure of security.

I have heard learned counsel for the petitioner who has stated that re-summoning of the complainant as witness is necessary as the petitioner as accused wants to confront him as to what was the necessity for issuing a cheque subsequently as there is proceedings under Section 138 of the Act initiated by petitioner against the complainant.

I have carefully considered the arguments and I am of the opinion that the petitioner has already set his defence as is apparent from his statement under Section 313 Cr.P.C. He has also examined two defence witnesses. The question which the petitioner wants to put to the witness by re-summoning him can be established by him while producing his defence evidence.

At this stage, counsel for the petitioner submits that the defence evidence has also been closed by the petitioner.

After hearing counsel for the petitioner, I am of the view that the presumption under Section 139 of the Act can be rebutted by even producing defence evidence. No ground is made out at this stage to allow the application under Section 311 Cr.P.C. to re-summon the complainant.

Taking into consideration the stage of the case, I do not deem it appropriate to allow the application under Section 311 Cr.P.C. as the defence available with the petitioner has already been put on the record.

Dismissed.

In case petitioner seeks to establish some document, it will be open to the petitioner to avail the benefit of provisions of Section 294 (3) Cr.P.C.

February 23, 2015
sanjay

(M.M.S.BEDI)
JUDGE