

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

CRM-M-7384 of 2015

Date of Decision: July 13, 2015

Surinderpal Singh

...Petitioner

Versus

Raghvir Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Lajpat Sharma, Advocate
for Mr. VPS Mattewal, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

This is a petition preferred under Section 482 Cr.P.C. seeking quashment of order dated 23.01.2015 Annexure P/3 passed on the application under Section 311 read with Section 294 Cr.P.C. by learned JMIC, Samrala, whereby, the application for recalling of complainant Raghvir Singh for further cross-examination stood declined.

Heard, learned counsel for the petitioner. A complaint under Section 138 Negotiable Instrument Act, 1881 was preferred by complainant Raghvir Singh against accused now petitioner-Surinderpal Singh in which application in question was moved praying that the complainant be recalled for his further cross-examination to admit or deny some statements earlier made by him before police. Learned Magistrate through impugned order declined the same and that is how the instant petition has

crystallised.

No doubt, under the provisions of Section 311 Cr.P.C. vests in the Court ample power to recall or re-examine any witness at any stage of the trial for judicious adjudication but the same is governed with certain riders and it is not unbridled power but is a judicious exercise of the power by the Court. The complainant Raghvir Singh had been examined and, thereafter, cross-examined at the trial of the complaint and as is reflected it is at the fag end of the trial when the matter was fixed for defence evidence the application in question was moved. The petitioner-accused had ample opportunity to cross-examine the said witness and which he did and for a very long period remained in oblivion to this so called need to examine him and it is when the matter is almost at final adjudication had the audacity to move the Court. Learned counsel for the petitioner could not impress this Court, how, it is expedient to examine this witness when the petitioner was fully aware of this statement so alleged to have been made before the police even at the time of examination/cross-examination of this witness and prior thereto and by his own gross negligence failed to put it to the witness as claimed in the prayer. Rather allowing such a prayer would tantamount to help the petitioner in filling up the lacuna in his case and the fact it is a pure case of complaint under Section 138 Negotiable Instrument Act which provides for presumption in terms of Section 139 of the Act. Moreover, learned counsel for the petitioner could not show cause how such a recalling was essential in the dispensation of justice and rather application on the face of it appears to be frivolous to delay the proceedings. Moreover, instead of petitioner

having availed of the provisions by way of revision against such an order has chosen to invoke the jurisdiction of this Court under Section 482 Cr.P.C. In view of the judgment in **State of Haryana and others vs. Chaudhary Bhajan Lal 1992 SCC(1) 335** has to be very sparingly used, thus, this Court does not find any illegality or perversity in the impugned order, as such, the present petition being hopelessly without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 13, 2015
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