

In the High Court of Punjab and Haryana at Chandigarh

CRR-2392 of 2014

Date of Decision: 16.1.2015

Gulzar Singh

---Petitioner

versus

Jyoti

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rahul Deswal, Advocate
for the petitioner

Mr. Ashish Gupta, Advocate
for the respondent

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

REKHA MITTAL, J.

The present petition lays challenge to order dated 8.7.2014 passed by the trial court whereby the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (in short "Cr.P.C.") for recalling the complainant for cross examination has been dismissed.

The respondent filed complaint under Sections 138, 142 of the Negotiable Instruments Act, 1881 (in short "the Act") in regard to dishonour of cheque allegedly issued by the petitioner-accused in discharge of legally enforceable liability. Notice of accusation was served upon the petitioner

for commission of offence punishable under Section 138 of the Act to which he pleaded not guilty and claimed trial. The complainant-respondent tendered into evidence her affidavit by way of examination-in-chief on 19.5.2014 and the case was adjourned to 3.7.2014 for cross examination. On 3.7.2014, counsel for the accused-petitioner did not appear in the court to cross examine the complainant which was ordered to be treated as nil. The application filed by the petitioner for permission to recall the complainant for her cross examination came to be dismissed by the trial court vide impugned order dated 8.7.2014.

Counsel for the petitioner contends that in case the petitioner is not permitted to cross examine the complainant, the material witness in the case, a serious prejudice would be caused to him as the facts stated by the complainant would go unchallenged and the petitioner would be deprived of an opportunity to elicit material facts in view of his plea in defence to be raised during cross examination of the complainant. It is further argued that the petitioner remained present before the court throughout the proceedings but unfortunately, his counsel had to leave due to some personal work and as a result, he could not appear in the court for cross examination of the complainant. It is prayed that one opportunity may be allowed to the petitioner to cross examine the complainant in compliance with valuable right of the accused to defend himself in the trial, to be conducted by the court fairly and in a transparent manner.

Counsel for the respondent has supported the order passed by the Judicial Magistrate with the submission that as counsel for the petitioner neither cross examined the complainant on 9.5.2014 nor on 3.7.2014 despite

wait till 2.45 p.m. and the court recorded five zimni orders on that day, therefore, the petitioner is not entitled to indulgence of this Court.

I have heard counsel for the parties and perused the records.

A plain reading of the impugned order would make it evident that the petitioner was given two opportunities to cross examine the complainant i.e. once on the day the complainant tendered into evidence his affidavit by way of examination-in-chief and the second on 3.7.2014. The petitioner was admittedly present throughout on 3.7.2014 and made repeated requests that his counsel would appear in the court for cross examination. It appears to the Court that either due to some differences between the petitioner and his counsel or otherwise, his counsel avoided to appear in the Court resulting in serious prejudice to the petitioner as cross examination of the complainant was treated as nil.

The learned trial court recorded five zimni orders at different intervals on 3.7.2014 and reading of those orders makes it clear that the court was hell bent to complete examination of the complainant on that day and had been concentrating more on this case than taking up other matters which must have been listed on 3.7.2014. It further appears that the Judicial Magistrate did not advert to the implications of treating cross examination of the complainant as nil despite the accused being present in the Court throughout. There is nothing on record to suggest that the accused-petitioner had any mala fide intention in not cross examining the witness on 3.7.2014. In view of the above, I am of the considered opinion that the impugned order cannot stand the test of judicial scrutiny and liable to be set aside.

For the reasons aforesaid, the petition is allowed, impugned order is set aside and the petitioner is provided one opportunity to cross examine the complainant subject to costs of Rs.2000/- to be deposited in the Legal Services Authority, Karnal.

(REKHA MITTAL)
JUDGE

16.1.2015
PARAMJIT