

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 860 of 2015 (O&M)
Date of decision: March 11, 2015

Nishan Singh

.... Petitioner

Versus

Gurdeep Bedi

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Jasdeep Singh Gharuan, Advocate
for the petitioner.

Jaspal Singh, J.(Oral)

Challenge in this revision petition is to the order dated 07.02.2015 passed by learned Judicial Magistrate Ist Class, Patiala vide which an application preferred by the respondent for permission to examine CW-2 Ashok Kumar for his cross-examination in a complaint case under Section 138 of the Negotiable Instruments Act (for short "Act") captioned as Gurdeep Singh vs. Nishan Singh was allowed .

Briefly stated the facts giving rise to the instant *lis* are that Gurdeep Bedi-respondent filed a criminal complaint under Section 138 of the Act bearing complaint No. 863 dated July 28, 2012, alleging that petitioner-Nishan Singh issued a cheque bearing No. 816917 dated May 15, 2012 for an amount of ₹22,00,000/- drawn at HDFC Bank, Branch Rajpura to him. On presentation, the said cheque was dishonoured with the remarks "stop payment" vide memo dated May 16, 2012 (Annexure P-1). Since, Nishan Singh-petitioner did not make the payment of amount despite the service of notice under the provisions of the Act, the complaint was filed and the same was listed for evidence.

Ashok Kumar was examined as one of the witnesses from the side of complainant as CW-2, who tendered in evidence his affidavit Ex.CW-2/A on July

09, 2014 and the case was adjourned to July 23, 2014 for the purposes of his cross-examination, on which date he did not appear. Even, he also did not appear on some subsequent dates for the purposes of his cross-examination. Ultimately, learned counsel for the complainant closed his evidence. When the case was fixed for arguments, it came to light that cross-examination of Ashok Kumar-CW-2 could not be conducted. It necessitated the filing of application, which was allowed vide impugned order.

The contention of learned counsel for the petitioner is that application has been moved by respondent at a very belated stage just to fill up the lacunae left in his case. It was not due to inadvertence or oversight that CW-2 Ashok Kumar was not cross-examined. Rather, due to the fact that complainant was directed to produce Ashok Kumar on July 09, 2014, August 06, 2014, August 13, 2014, August 20, 2014 and then for August 27, 2014, the day complainant's counsel closed the evidence. Moreover, prejudice has been caused to the petitioner by allowing the complainant to fill up the lacunae left in the case by way of presenting Ashok Kumar for the purposes of his cross-examination. Even otherwise, it is well settled that deviation from the regular procedure of the trial such as in case of recalling of witness, can be made only when there are very strong reasons supporting such deviation or there is existence of such circumstances which are emergent in nature and beyond the control of party. But learned trial Court has invoked the provisions contained in Section 311 Cr.P.C. to recall the witness as a matter of routine. Thus, impugned order is not sustainable and deserves to be set aside.

This Court has given an anxious thought to the submissions made by learned counsel for the petitioner but does not find any substance in it.

Undoubtedly, learned trial Court is empowered to summon any person as a witness at any stage of any inquiry, trial or other proceedings under Section

satisfied, the court can call a witness not only on the motion of either the prosecution or the defence but also it can do so on its own motion. The only requirement is that the evidence to be adduced or witness to be recalled must appear to the court to be essential for the just decision of the case.

Adverting to the facts of the case in hand, CW-2 Ashok Kumar appeared in the witness box and he furnished his affidavit Ex.CW-2/A on July 09, 2014. The case was adjourned to July 23, 2014 for his cross-examination. Though, case was adjourned number of times subsequent thereto, also but it appears that due to some over-sight, inadvertence or omission learned counsel closed the evidence of complainant. Thereafter, it came to light that CW-2 Ashok Kumar could not be cross-examined and application under Section 311 Cr.P.C. for permission to summon/recall CW-2 Ashok Kumar for the purposes of his cross-examination was moved. Recalling of CW-2 Ashok Kumar for his cross-examination is necessary to adjudicate upon the matter in controversy effectively and judiciously. It cannot be said that application was moved just to fill up lacunae. This Court does not find any infirmity or illegality or legal flaw in the impugned order.

In the light of what has been discussed above, the instant petition is dismissed.

March 11, 2015
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(JASPAL SINGH)
JUDGE