

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

**CRIMINAL REVISION CASE No. 397 of 2016**

**ORDER:**

Aggrieved by the order dated 07.01.2016 passed in CrI.M.P.No.1515 of 2015 in C.C. No.329 of 2012 on the file of the Judicial Magistrate of First Class, Special Mobile Court at Nalgonda, wherein an application filed under Section 311 Cr.P.C., to recall P.W.1 for cross-examination with regard to mode of payment of loan and service of notice was rejected, the present Revision is filed.

The facts in issue are as under :

The first respondent herein filed a private complaint against the petitioner herein for an offence punishable under Section 138 of the Negotiable Instruments Act. The said case was taken on file as C.C. No.329 of 2012. It is the case of the complainant that the petitioner/accused took a hand loan of Rs.14 lakhs to meet his family necessities. With regard to repaying the said amount with interest, he is alleged to have given a cheque bearing No.464551 for Rs.15,00,000/- towards part satisfaction of the said amount. The said cheque, when presented, was returned with an endorsement "Funds Insufficient". Thereafter a notice was issued on 16.06.2012 calling upon the accused to pay the amount within 15 days from the date of receipt of the notice. It is said that inspite of service of notice the accused failed to pay the amount. Hence, the present complaint is filed.

During the course of trial, the petitioner/accused filed an application under Section 311 Cr.P.C., seeking to recall P.W.1 on the ground that he could not instruct his previous counsel to cross-examine P.W.1 with regard to mode of payment of loan amount and also with regard to legal notice being sent to correct address of the petitioner.

A counter came to be filed opposing the same. Relying upon a document dated 31.10.2015 issued by the Municipal Corporation, Nalgonda, wherein it was mentioned that there is no house with Dr.No.4-1-659, an application to recall P.W.1 was filed, but the same was strongly opposed by the counsel. While dismissing the said application, the trial Court held as under:

"I have gone through the cross-examination of P.W.1, which shows that he was cross-examined, at length, by the accused, on the above two aspects. This petition is filed by the accused only to drag on the proceedings, at the stage of defence evidence. There are absolutely no merits in the petition, and the same is liable to be dismissed."

Challenging the same, the present Revision is filed.

The counsel for the petitioner submits that on coming to know about the filing of the case, the petitioner entered appearance by engaging an advocate but no notice was served on him.

The counsel for the first respondent would submit that accused having received the notice has come forward with this plea at a belated stage on the ground that the address mentioned in the notice is incorrect and there does not exist any house with that number. It is his case that the notice sent from Court is served and as such the present application cannot be entertained.

The above contentions raised are based on factual aspects which the trial Court alone can appreciate the same during the course of trial. Permitting the petitioner to cross examine PW.1 on that aspect namely with regard to service of notice itself may not cause any prejudice to the complainant.

As seen from the order, the learned Magistrate in a very cryptic manner rejected the request made by the petitioner. A perusal of the cross-examination of P.W.1 shows that there was specific suggestion to P.W.1 that the accused did not receive the legal notice which is marked as Ex.P-4 and the signature on the postal acknowledgment-Ex.P-6 is not that of the accused. The same were denied by P.W.1. Though the learned counsel for the petitioner sought for cross-examination of P.W.1 with regard to mode of payment, but he fairly submits that he is not pressing for the same. He seeks recall of P.W.1, to cross-examine him only with regard to service of legal notice issued pursuant to dishonour of cheque. In **NATASHA SINGH VS. CBI**<sup>[1]</sup> the Apex Court held as under:-

"Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is

essential that the rules of procedure that have been designed to ensure justice are scrupulously followed.”

Since no prejudice is caused to complainant if P.W.1 is put to cross-examine with regard to service of notice and having regard to the judgment of the Apex Court referred to above, the petitioner can be permitted to cross-examine P.W.1 to the extent indicated above.

Accordingly, the Criminal Revision Case is allowed by setting aside the impugned order dated 07.01.2016 in CrI.M.P.No.1515 of 2015 in C.C.No.329 of 2012 on the file of the Judicial Magistrate of First Class, Special Mobile Court at Nalgonda, and the petitioner herein is permitted to cross-examine P.W.1 only with regard to service of notice on him. It is made clear that the petitioner shall confine his cross-examination to the extent indicated above and thereafter proceed with the completion of the case at the earliest. As a sequel to it, miscellaneous petitions pending if any in this Criminal Revision Case, shall stand closed.

---

**JUSTICE C.PRAVEEN KUMAR**

Dt: 21.04.2016  
GM

---

<sup>[1]</sup> (2013) 5 SCC 741