

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

CRM-M-27802-2016 (O&M)

Date of decision-20.10.2016

Gurjant Singh

...Petitioner

Vs.

M/s Chiman Lal Raj Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. M.K. Bhatnagar, Advocate for
Ms. Richa Mittal, Advocate for the petitioner.
Mr. Munish Garg, Advocate for the respondent.

JITENDRA CHAUHAN, J. (Oral)

On filing this petition under Section 482 of the Code of Criminal Procedure, 1973, (in short the 'Cr.P.C.'), the petitioner lays challenge to the order dated 16.11.2015, passed by Sub Divisional Judicial Magistrate, Phul, order dated 16.07.2016 passed by Additional Sessions Judge, Bathinda, whereby his application under Section 311 Cr.P.C. was declined and the revision preferred against the above said order was also dismissed.

The petitioner who is an accused before the Court below filed an application under Section 311 Cr.P.C. for recalling the complainant for facing further cross-examination. The ground taken in the application was that the father of the complainant was a commission

agent and there is a presumption of law that when a person is commission agent he usually gets signatures on blank papers from various people. The complainant was not cross-examined on this point, therefore, the instant application was moved.

The order dated 16.11.2015, the application was dismissed holding that the counsel for the accused had already cross-examined the complainant at length.

Being dissatisfied, the accused preferred an appeal before Additional District Judge, Bathinda. However, the same is dismissed vide order dated 16.07.2016.

Both the aforesaid orders have been assailed in the instant petition under Section 482 Cr.P.C.

It is contended by learned counsel for the petitioner that the recalling of the complainant is very much essential for the just decision of the case as certain material questions need to be put to the complainant qua the fact of his father being a commission agent and that the signatures of the accused were taken during the course of business of commission agent were inadvertently omitted by the earlier counsel.

On the other hand, it is contended by learned counsel for the respondent-complainant that the counsel for the accused-petitioner had already cross-examined the complainant at length, therefore, with the change of counsel no right accrues to the accused to further cross-examine the witness.

I have heard the learned counsel for the parties and have gone through the record.

The perusal of the record reveals that the accused had already cross-examined the complainant at length and the cross-examination runs into 10 pages. Thereafter, the accused changed his counsel and the new counsel intended to cross-examine the complainant further. The grounds for further examination put forth by the accused is that the fact that father of the complainant being a commission agent came into notice of the accused subsequently. However, this Court finds that the argument lacks in substance because even if father of the complainant was a commission agent, that fact does not affect the case of the complainant as the case in issue is under Section 138 of Negotiable Instruments Act and the signatures of the accused on the cheque are not stated to have been obtained by the father of the complainant. Otherwise also the accused has every right to prove in his defence the fact that the father of the complainant was a commission agent.

In this view of the matter, this Court finds no reason to accept the present petition. Subsequently, the same is dismissed.

(JITENDRA CHAUHAN)
JUDGE

October 20, 2016

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Whether speaking/reasoned : Yes No

Whether Reportable : Yes No