

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No. M-31514 of 2016 (O&M)
Date of decision : December 03, 2016

Harbhajan Singh

....Petitioner

versus

State Bank of India

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Hardeep Singh, Advocate, for the petitioner

Fateh Deep Singh, J. (Oral)

Petitioner Harbhajan Singh who is facing trial in a criminal complaint under section 138 of the Negotiable Instruments Act, 1881 (in short, the Act) before the court of learned Judicial Magistrate Ist Class, Patiala has sought to impugn order dated 6.8.2016, Annexure P/7 whereby his application Annexure P/5 under section 311 Cr.P.C. for recalling Subash Chand Goyal CW1 and Sunil Kumar Sharma, Assistant Manager, CW2 for further cross-examination (sic as only CW1 Sunil Kumar Sharma was actually examined after summoning of the accused) stood declined.

Admittedly it is the own stand of the petitioner which is well elicited in his petition and the averments of his counsel that initially the complainant Bank had examined CW1 Subash Chand Goyal in the

preliminary evidence and subsequently who was substituted after summoning by CW1 Sunil Kumar Sharma. The mere fact that there has been denial of legitimate right to cross-examine could not be substantiated by the counsel for the petitioner. The examination-in-chief of this lone witness was recorded in the presence of accused and on his request the matter was adjourned for cross-examination and with much efforts and repeated adjournments, the cross-examination was effected apparently a delaying tactic as in between accused had remained away from the court on one pretext or the other throughout this trial. There is no apparent reasoning put forth or the reasons why further cross-examination was so necessitated and that the very power to summon material witness examined or recall any witness at any stage of the proceedings rather though unbridled but the same have to be on sound judicial tenets and cannot be merely allowed on the asking of the party when nothing substantial is coming forth. Apparently, in the light of the law laid down **Urmila Devi vs Yudhvair Singh, 2013 (4) R.C.R. (Crl.) 899** being intermediary order is certainly amenable to revision in view of the preposition of law laid down in **Rajendra Kumar Sitaram Pande & Ors. vs. Uttam & Anr., 1991(1) R.C.R. (Crl.) 801** and instead of choosing statutory remedy available under the Code of Criminal Procedure for filing revision in terms of section 397 Cr.P.C., the petitioner has bypassed all forums in between and has sought to assail the same by exercising inherent powers of this Court which needs to be exercised only in exceptional cases as a rarity in view of law laid down in **State of Haryana**

vs Bhajan Lal and ors., 1992 AIR (SC) 604. Thus, even otherwise by virtue of judicial discipline the petitioner ought to have approached the lowest court having jurisdiction under the hierarchy of the courts and thus, in view of the discussion detailed above, the present petition is certainly without merit and stands dismissed in limine.

December 03, 2016
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?

Yes/No

Whether Reportable ?

Yes/No