

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

CRM No.M-35029 of 2016 (O&M)

Date of Decision: October 21, 2016

Gurminder Singh Thind

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.G.K.Mann, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 13.09.2016 passed by learned JMIC, SBS Nagar, vide which the application filed by the petitioner under Section 311 Cr.P.C. was dismissed.

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

From the record, I find that Joginder Singh filed a complaint under Section 138 of the Negotiable Instruments Act against Gurminder Singh Thind. During the trial, the accused filed the application under Section 311 Cr.P.C. for re-examination of complainant Joginder Singh. It is stated in the application that accused wants to ask some relevant and important questions regarding the presence of the complainant on

conduct of the complainant, which the accused could not ask.

Learned Magistrate, after taking the reply and hearing the parties, dismissed the application.

From the record, I find that the complainant has already been examined-in-chief on 25.07.2013 and cross-examined on 11.11.2013 and the evidence of the complainant was closed on 18.01.2016. The statement of the accused under Section 313 Cr.P.c. was also recorded and since then, the case was fixed for defence evidence of the accused. At this stage, there is no document with the accused to show that the complainant was not in India on 23.09.2009. The accused wants to make fishing enquiry by recalling Joginder Singh, whether he was in India or not. It is not the case of the accused while cross-examining him that he was not in India.

The perusal of the record shows that this application has been filed only to delay the proceedings and the complainant was sought to be called for re-examination simply on the vague allegations that accused wants to question the conduct of the complainant as well as to show that no liability arises to the accused. There is nothing on the record to show as to why these questions were not asked at that very time when the complainant was examined in the Court.

Though the Court has special power to call any witness for re-examination etc. but these powers are with the Court. If any party wants to recall the witness then the Court should be satisfied that whatever evidence either party wants to examine, is essential for just decision of the case. It is also not shown at the time of argument that this defence has been taken in the statement under Section 313 Cr.P.C. that complainant was not present in

In view of the above discussion, I find that the impugned order dated 13.09.2016 passed by learned JMIC, SBS Nagar, is correct, as per evidence and law and does not amount to miscarriage of justice.

Therefore, finding no merit in the present petition, the same is dismissed.

October 21, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No