

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

CRM-M No.39001 of 2016.

Date of Decision: 03.11.2016.

Bharpur Singh

....Petitioner.

VERSUS

M/s Varinder Kumar and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. R.S. Randhawa, Advocate for the petitioner.

SNEH PRASHAR, J.

Assailing the orders dated 22.08.2016 and 17.09.2016, whereby the petitioner was declined an opportunity to cross examine the complainant and subsequently an application under Section 311 of the Code of Criminal Procedure (for short, "Cr.P.C."), filed by the petitioner for recalling the complainant for cross-examination was dismissed, the instant petition invoking the provisions of Section 482 Cr.P.C. has been filed.

The submissions made by Mr. R.S. Randhawa, learned counsel representing the petitioner have been considered.

The petitioner is facing trial in a complaint case filed under Section 138 of the Negotiable Instruments Act by Varinder Kumar (respondent No.2). As is evident from the impugned order dated 17.09.2016, the complaint was pending for evidence since 02.04.2016.

Despite numerous opportunities availed by the petitioner, he had failed to

present but the petitioner again expressed his inability to cross examine him on the ground that his counsel was not available due to ill health, finding no ground for adjourning the case again for the same purpose i.e. cross-examination of the complainant, learned trial Court ordered that the cross-examination of the complainant be treated as nil. The complainant on the said date closed his evidence and the case was adjourned for recording of statement of the petitioner under Section 313 Cr.P.C. The petitioner then moved an application under Section 311 Cr.P.C. for recalling the complainant for cross-examination which was dismissed by learned Judicial Magistrate Ist Class, Patiala.

Learned counsel for the petitioner submits that non cross-examination of the complainant by the petitioner will result in grave prejudice to his defence. It is on account of non availability of his counsel that the petitioner was unable to cross examine the complainant when last opportunity was given to him for the said purpose. Learned counsel submitted that the complainant is the most material witness and only one opportunity be given to the petitioner to cross examine him.

Indeed, as is evident from the impugned order the case had been adjourned repeatedly for cross-examination of the complainant on request made by the petitioner on one pretext or the other. The petitioner was even burdened with cost for taking the adjournments. Though he paid the costs imposed, but failed to cross examine the complainant. Anyhow, the last order dated 22.08.2016 when the cross-examination of the complainant was treated as 'nil' by learned Magistrate shows that on that date the counsel for the petitioner was not present due to some health

Thus, considering the facts and circumstances and in the interest of justice, the petitioner is allowed one opportunity to cross examine the complainant, subject to payment of Rs.7000/- as costs. The costs be deposited with Legal Aid Authority. The parties will appear before the trial Court and a date will be fixed by learned trial Court for cross-examination of the complainant by the petitioner. In case due to some unforeseen eventuality the case has to be adjourned on that date, learned trial Court will be at liberty to fix some other date for the said purpose, but only one effective opportunity will be granted to the petitioner and the cross examination will be concluded on the same day.

Petition is accordingly disposed of.

(SNEH PRASHAR)
JUDGE

03.11.2016
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Whether speaking/ reasoned : Yes

Whether Reportable : No