

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-41552 of 2014
DECIDED ON: JANUARY 08, 2016

Sukhpal Kaur

....Petitioner...

VERSUS

Arun Kumar

....Respondent...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

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

Mr. Amit Saini, Advocate,
for the respondent.

JASPAL SINGH, J

This is a petition under Section 482 of the Code of Criminal Procedure for quashing of order dated 21.11.2014 (Annexure P-4) passed by Id. SDJM, Samrala vide which application filed by the petitioner for recalling the complainant for his cross-examination has been dismissed, in a complaint case No. 4/2/15.1.14, captioned as ***“Arun Kumar vs. Sukhpal Kaur”*** under Section 138 of the Negotiable Instruments Act (for short, “ Act” only).

2. Briefly stated the facts giving rise to the instant petition are that respondent-complainant lodged a complaint under Section 138 of the Act in the Court of Id. Sub Divisional Judicial Magistrate, Samrala against the petitioner for alleged dishonour of cheque issued by her. Vide order dated 15.01.2014, Id. SDJM, Samrala

summoned the petitioner to face trial. In compliance of summons issued to the petitioner, she appeared and joined the proceedings. The case was listed for the evidence of the complainant for April 02, 2014. Since, on that date, no witness was produced or examined, it was adjourned to April 29, 2014 and subsequent thereto it was adjourned to August 27, 2014 but on that date also no witness was examined but the case was listed for defence evidence to be adduced by the petitioner on September 17, 2014. On that date i.e. September 17, 2014, an application was moved for permission to recall the complainant for the purposes of cross-examination but that application was dismissed by the Id. trial court vide impugned order dated November 21, 2014, which necessitated the filing of instant petition.

3. The contention of learned counsel for the petitioner is that the petitioner intends to cross-examine the complainant to prove her case regarding the factum of non-legal liability/debt and non-advancement of loan as well as who filled the cheques and that there was no agreement for the repayment of any such amount. Learned counsel for the petitioner further contends that earlier the application was not moved as the case was fixed for the complainant evidence and abruptly, it was listed for the defence evidence when the application was moved. Subsequent to filing of the instant petition, even the FIR has also been registered against the complainant-respondent at police Station Samrala, District Khanna under Sections 420, 467, 468, 471 and 120-B IPC, in which, it has been clearly

unfolded that the signatures on the blank cheques have been obtained from the petitioner as a guarantee to repay some of the loan amount borrowed by the husband of the petitioner. Thus, recalling of the complainant is necessary to adjudicate the matter effectively and judiciously.

4. Per contra, learned counsel for the respondent has argued that there is no reason to recall and re-examine the complainant after summoning of the petitioner as an accused and complainant is fully competent to adduce his evidence by way of an affidavit. Even the complainant is required to examine himself twice, one after the filing of the complaint and one after the summoning of accused. Since, Id. Magistrate did not think it proper to recall the complainant, application has rightly been dismissed by him. In support of his contention, learned counsel for the respondent has placed reliance upon the judgment of Hon'ble Apex Court captioned as “**Indian Bank Association and others v. Union of India and others**”, 2014 (2) RCR (Criminal) 598.

5. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and scanned the impugned order and is of the considered view that the impugned order is not sustainable in the eyes of law as the accused also deserves to be given proper opportunity of hearing and to adduce evidence, which she intends to adduce to prove her innocence or falsify the case of the complainant-respondent.

6. A perusal of various observations made in **Indian Bank**

Association's case supra reveals that there is no straight jacket formula that the complainant cannot be summoned or recalled for the purposes of his examination after the summoning of accused. The discretion lies with the Magistrate to recall the complainant for the purposes of cross-examination but for that purpose, reasons have to be recorded in the order as to why the complainant is to be recalled. Moreover, it is the duty of the concerned Court to advance justice to the parties and not to scuttle down their rights on the basis of some technicalities.

7. Adverting to the facts and circumstances of the case in hand, there is a dispute raised by the petitioner-accused with regard to the factum of non-legal liability/debt as well as non-advancement of loan as alleged by the respondent-complainant. Not only this, even she has also disputed the receipt dated August 27, 2013 as well as the alleged agreement to repay the loan amount. Even, registration of FIR against the respondent is one of the factors as it also relates to the disputed amount. Even otherwise, accused is required to be afforded an opportunity to defend himself/herself.

8. Accordingly, the petition is allowed whereby order dated November 21, 2014 is set aside. Consequently, application dated September 17, 2014 is allowed. Parties are directed to appear before the Id. trial Court on February 09, 2016.

JANUARY 08, 2016
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(JASPAL SINGH)
JUDGE

To be reported in the digest.