

CRM-30788-2016 in/and
CRM-M-43274-2014
Date of Decision : 05.10.2016

Gulshan Rai AggarwalPetitioner
versus

Gopal Krishan MalhotraRespondent

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Charanjit Sharma, Advocate
for the petitioner.

Mr. Nimanyu Gautam, Advocate
for the respondent.

M.M.S. BEDI, JUDGE (ORAL)

Learned counsel for the complainant/respondent has submitted that in the interest of expeditious disposal of the trial and for fair adjudication of the matter, he has got no objection, in case, the petition is restored and heard on merits.

The miscellaneous application is allowed. Order dated 19.09.2016 is recalled. The main petition is restored to its original number for hearing.

I have heard counsel for the parties at length.

This is a petition under Section 482 Cr.P.C. challenging two orders both dated 19.09.2014, Annexure P-4 and P-5.

Vide Annexure P-4, the trial Court has dismissed the application of petitioner-accused for clubbing of two complaints. The petitioner is facing two proceedings under Section 138 of the Negotiable Instruments Act, pertaining to two different cheques. As such, the trial Court has rightly dismissed the application for clubbing of the two

complaints.

It has been informed that both the cases have been ordered to be heard by the same Judge by allowing an application for transfer.

I have considered the said contention and I am of the opinion that transferring of two complaints to one Judge will not *ipso facto* give a right to an accused to get the two separate complaints clubbed. He can always request the trial Court for taking up both the cases simultaneously, by fixing the same date. No ground is made out for interference in the order dated 19.09.2014 (Annexure P-4), dismissing the application for clubbing.

The next contention of learned counsel for the petitioner is that though the complainant (CW 1 - Gopal Krishan Malhotra) was present for cross-examination on 19.09.2014 but on account of learned counsel for the petitioner, having failed to cross-examine the complainant (CW 1 - Gopal Krishan), the cross-examination was ordered to be treated as "Nil". No doubt, the conduct of the petitioner and his counsel warranted the treatment, given by the learned trial Court but at the same time, it cannot be ignored that cross-examination is an important aspect of the fair trial, which gives a fair opportunity to the accused, not only to impeach the credibility of the prosecution witness but it also enables the trial Court to arrive at a just conclusion by appreciating the examination in chief, in context to the cross-examination. Though the petitioner had adopted an unreasonably evasive approach for long duration, causing unnecessary inconvenience

to the complainant and the Court but in the interest of justice, he can be permitted to cross-examine the complainant by suitably compensating the complainant by granting him costs for adjournment, as per the provisions of Section 309 Cr.P.C.

This petition is allowed and in the interest of justice, it is ordered that the trial Court shall fix a date for complainant, Gopal Krishan to appear as CW 1 and make himself available for cross-examination by the counsel for the petitioner, subject to petitioner paying costs of Rs. 15,000/-. It is directed that CW 1 - Gopal Krishan will be cross-examined subject to the petitioner offering the costs of Rs. 15,000/- to him on the date of hearing. It is made clear that in case, the cost is not paid, the present petition will be deemed to have been dismissed.

(M.M.S. BEDI)
JUDGE

05.10.2016

Neha

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No