

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-6250 of 2015
DECIDED ON: March 10, 2016

BITTU B. MASIH

.....PETITIONER..

VERSUS

RAJU MASIH @ RAJ BHARTI

....RESPONDENT..

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. D.K. Bhatti, Advocate, for the petitioner.

Mr. Arihant Goyal, Advocate for the respondent.

JASPAL SINGH, J.

Instant petition has been preferred under Section 482 of the Code of Criminal Procedure (for short, "Code") by Bittu B. Masih-petitioner seeking quashing of order dated 06.01.2015 (Annexure P-10) passed by the Id. Additional Sessions Judge in Criminal RBT Revision No. 269 of 2014, vide which, order dated 13.02.2014 passed by the Court of Sh. Shaminder Pal Singh, PCS, JMJC, Amritsar (Annexure P-9) in complaint case No. 423/2010, dated 17.07.2010/27.07.2010, captioned as "***Raj Masih @ Raj Bharti vs. Bittu B. Masih***" was upheld whereby the application under Section 311 Cr.P.C. seeking recalling of the complainant for further cross-examination, was dismissed.

2. The contention of learned counsel for the petitioner is that the complaint case captioned as "***Raj Masih @ Raj Bharti vs. Bittu B.***

Masih” was filed under Section 138 of the Negotiable Instrument Act (for short, “Act”) by father-in-law of the petitioner, who by taking advantage of the strained relation between the petitioner and his wife got hold the cheque and misused the same to blackmail him (petitioner). In fact, the petitioner and his wife Rozleen Rittu Bhatti were having a joint account and the cheque book was always remained in possession of his wife and when the relation between the petitioner and his wife became strained, she took away some cheques. The matter in this regard was also reported to the police on 19.03.2007. There being strained relations, a large number of cases criminal as well as civil started *interse* the petitioner and his wife. However, during the pendency of complaint, in question (Annexure P-1), FIR No.77, dated 26.05.2010, registered at Police Station Division No.2, Ludhiana was quashed on the basis of compromise vide order dated 17.11.2012. Similarly, vide another order dated July 17, 2013 another FIR No. 65, dated 14.05.2010, Police Station Division No.2, Ludhiana was quashed on the basis of compromise.

3. Learned counsel for the petitioner further contends that vide the aforesaid compromise, it was envisaged that all the litigation(s) pending between the parties will either be withdrawn or the same will be quashed in view of the amicable settlement in between the parties but the complaint preferred by the father-in-law of the petitioner under Section 138 of the Act was not withdrawn and it was being adjourned time and again as the wife of the petitioner resile from the compromise.

Through, an application moved under Section 311 of the Code, the

petitioner only intended to recall the complainant for the purpose of his cross-examination in respect of the compromise and the contents thereof, which was arrived earlier between them and on the basis of which, FIR No. 65, dated 14.05.2010 was got quashed but the Id. Magistrate dismissed the said application simply on the ground that sufficient opportunity has already been awarded to the petitioner for the purpose of cross-examination of the complainant.

4. A revision petition preferred by the petitioner challenging order dated 13.02.2014, passed by the Id. Magistrate, also met with the same fate, which necessitated the filing of the instant petition for setting aside the orders passed by both the courts below. The petitioner only seeks an opportunity to cross-examine the complainant qua the compromise and it was only due to the compromise that the complaint was adjourned time and again for the purpose of cross-examination of the complainant. Moreover, respondent-complainant is not going to suffer any irreparable loss, in case, application is allowed.

5. On the other hand, learned counsel for the respondent-complainant has supported the impugned order(s) passed by both the courts below.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and has scrutinized the impugned order(s) available on file.

7. No doubt, Section 311 of the Code empowers the Court to summon any person as a witness, at any stage of inquiry, trial or other proceedings and the power is not confined to any particular class of

person. But at the same time, it is also to be seen as to whether sufficient opportunity has already been afforded to the concerned party for the purposes of leading evidence or cross-examination of a witness and whether filing of application is *bonafide*.

8. A close scrutiny of the file as well as impugned order(s) reveals that the complainant was examined-in-chief on 20.07.2011. Thereafter, the case was adjourned two times till 17.10.2011 for the purpose of cross-examination of the complainant but the petitioner fails to cross-examine him. Then on 17.10.2011, the case was adjourned to 25.11.2011. Even, thereafter, the case was adjourned on 14.02.2012 and 05.04.2012. On 05.04.2012, the case was adjourned to 03.05.2012, subject to payment of ₹300/- as costs with last opportunity. On 03.05.2012, case was adjourned to 08.06.2012. On 08.06.2012, the complainant was partly cross-examined and matter was again adjourned to 24.07.2012 for his further cross-examination. Even, thereafter, the case was adjourned number of times and ultimately, the Court was constrained to close the evidence of the petitioner on 15.11.2013 when even the costs to the tune of ₹500/- imposed upon the petitioner was not paid and case was listed for reciting the explanation of the accused as required under Section 313 of the Code. It was only on 05.12.2013 when the evidence was closed by order and the opportunity given as nil was incorporated in the cross-examination, application under Section 311 of the Code was filed. The conduct of the petitioner in non-cross-examining the complainant and even non-payment of costs imposed upon him are suggestive of the fact the petitioner was not ready to cross-examine the

witness and was lingering on the matter on one pretext or the other. Such a person do not deserve any leniency of the Court. Moreover, if any, compromise had been arrived at between the parties as has been put forth today by the learned counsel for the petitioner during the argument, he could have very easily move an application on the dates so fixed that the matter has been compromised and he intends to cross-examine the witness on that point but nothing has been done, it appears that for moving an application under Section 311 of the Code, the petitioner was waiting the harsh order to be passed by the trial Magistrate. Such a person is not required to be heard even on merits, who is either negligent or is intentionally not conducting the cross-examination despite the complaint has been adjourned a large number of times.

9. In the light of what has been discussed above, this Court does not find any merit in the present petition. As such, the same is dismissed.

March 10, 2016
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(JASPAL SINGH)
JUDGE