

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

Hemlata
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CRM-M-34599-2014(O&M)

Date of decision: 30.08.2017

Sunita Rani

...Petitioner

Versus

Roma Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Dhillon, Advocate
for the petitioner.

Mr. Amit Dhawan, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 09.09.2014 (Annexure P-3) passed by the trial Court, vide which an application filed by the petitioner for recalling the witness i.e. the complainant, in order to cross-examine him was dismissed.

Counsel for the petitioner submits that on an earlier occasion when the petitioner was summoned by the trial Court, the petitioner was given notice of accusation and the case was fixed for defence evidence, later on, which was closed on 04.09.2014. Thereafter, the petitioner moved an application under Section 311 Cr.P.C. for cross-examination of the prosecution witnesses. In para No.9 of this application, it is submitted that the petitioner/accused is an illiterate lady and was not well versed with the intricacies of the law and therefore, she could not avail the opportunity to cross-examine the prosecution witness and in case, one opportunity is granted to the petitioner, no prejudice will be caused to the respondent-accused as right to cross-examine is an important right given to the accused persons to put up his defence to prosecution witnesses and proved his

innocence in this case. The trial Court, vide order dated 09.09.2014, dismissed the application on the ground that since the order dated 03.07.2014 was not challenged by the petitioner and the petitioner has already closed her defence evidence vide separate statement dated 04.09.2014, the application is not maintainable.

Counsel for the petitioner further submits that the petitioner could not move an application under Section 145 of the Negotiable Instruments Act to cross-examination of the witnesses, examined by the complainant, for the reasons that she being an illiterate lady and was not well versed with the intricacies of the law and therefore, she could not move an application in time. Learned counsel for the petitioner has also referred to the provisions under Section 311 Cr.P.C. which gives power of the Court to summon material witness at any stage of inquiry, trial or any other proceeding under this Code, summon any person or recall and re-examine any person already examined. Thus, it is submitted that the application filed by the petitioner could not be dismissed only on the ground that the same has been moved at a later stage.

On the other hand, learned counsel for the respondent has opposed the prayer and has relied upon the judgment passed by the Apex Court in **Indian Bank Association Vs. Union Bank of India, 2014 (2) RCR (Criminal) 568** to submit that the trial Court should not recall or re-examine the complainant unless an application under Section 145 of Negotiable Instruments Act is filed.

After hearing learned counsel for the petitioner and I am of the opinion that the application filed under Section 311 Cr.P.C. is *pari materia*

to the provision under Section 145 of the Negotiable Instruments Act and merely the application has been filed under Section 311 Cr.P.C. instead of under Section 145 of the Negotiable Instruments Act, right to cross-examine cannot be denied to the petitioner, only on technical ground.

Accordingly, the impugned order is set aside and the present revision petition is allowed. The petitioner is granted one effective opportunity to cross-examine the respondent-complainant. Since, the proceedings before the trial Court were stayed vide order dated 07.10.2014, the parties through their counsels are directed to appear before the trial Court on 18.09.2017. The trial Court will fix one date for recording the cross-examination of the respondent-complainant.

Petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

30.08.2017
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No