

Sr. No.206

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No.M-37186 of 2014
Decided on: 01.10.2018

Gurjap Singh

.....Petitioner

Vs.

Sukhdev Singh

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Ms. Nimarta Kaur, Advocate for
Mr. Sunil Agnihotri, Advocate
for the petitioner.

Mr. N.K. Manchanda, Advocate for the respondent.

Rajbir Sehrawat, J. (Oral)

The present petition has been filed challenging the order dated 21.08.2014; whereby the application filed by the petitioner praying for permitting cross-examination of the complainant, again; has been rejected.

The counsel for the petitioner submits that application has been dismissed on the grounds, which are not germane to the considerations required to be taken into account by the trial Court; while deciding an application moved under Section 145(2) of the Negotiable Instruments Act, 1881 (for short 'the Act').

A perusal of the interim order placed on record by the petitioner shows that the complainant and another witness of the complainant were examined as CW-1 and CW-2 on 19.03.2014. On request of the counsel for the petitioner, the cross-examination of the witnesses was deferred and the case was adjourned to 05.06.2014 for cross-examination of the witnesses. The order dated 05.06.2014 shows that the petitioner was present before the Court along with his counsel. However, the Court adjourned the case for

defence evidence for 21.08.2014; observing that in view of the judgment of

the Hon'ble Supreme Court in **Indian Bank Association Vs. Union of India**, CWP No.18 of 2013; decided on 21.04.2014, summary procedure was to be adopted in cases under Section 138 of 'the Act'. From this, it appears that the trial Court inferred that no opportunity of cross-examination of the witness or the complainant need be given to the accused. The order dated 05.06.2014 also shows that no such opportunity was afforded by the trial Court to the petitioner. Resultantly, the application was filed by the petitioner under Section 145(2) of 'the Act' seeking opportunity to cross-examine the witnesses, which has been dismissed by the trial Court.

Since a witness has been examined before the Court, therefore, the accused, who is on the verge of facing the punishment, has every right to cross-examine the witness or the complainant. Otherwise also a bare perusal of Section 145(2) of 'the Act' makes it clear that although, while proceeding with a case as summary trial, the Court can permit the evidence by affidavit. However, if the accused so requires, then the trial Court has no option but to direct the complainant/witness to face the cross-examination by the accused. This right of the accused cannot be defeated lightly. The orders placed on record do not show any justifiable reason for denying to the petitioner the right to cross-examine the complainant/witness. Resultantly, the present petition deserves to be allowed and the petitioner deserves to be granted opportunity to cross-examine the witnesses of the complainant.

Accordingly, the present petition is allowed. The impugned order is set aside. The petitioner is granted one opportunity to cross examine the complainant/witnesses.

However, it is clarified that the petitioner shall be granted only one effective opportunity for such cross examination.

Still further, since the case pertains to the year 2012, therefore, it is further directed that after granting one effective opportunity to the petitioner to cross-examine the witnesses of the complainant, the trial itself shall be concluded by the trial Court within a period of one month thereafter.

01 October, 2018

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[RAJBIR SEHRAWAT]

JUDGE