

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

Crl. Misc. No.M-4613 of 2018

Date of Decision: 16.05.2018

Dinesh Kumar Khatri

...Petitioner

Versus

M/s Shri Balaji Stone Crushing Company

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Gorav Kathuria, Advocate, for the petitioner.

Mr. D.K. Prajapati, Advocate, for the respondent.

Amol Rattan Singh, J. (Oral)

By this petition, the petitioner seeks the quashing of the order dated 27.10.2017, passed by the learned Judicial Magistrate Ist Class, Faridabad, (Annexure P-1), by which the application filed by the petitioner under Section 311 Cr.P.C, for re-examination of the complainant in the complaint in question, has been dismissed.

Learned counsel for the petitioner submits that the petitioner should not be penalized for the fault of his counsel in not having cross-examined the complainant on a vital issue going to the root of the matter, which actually came up at the time when the statement of the accused under Section 263 (g) Cr.P.C. was recorded, by which he had denied his liability towards the complainant, and had further stated that neither the cheque bore his signatures, nor was it filled up and issued by him in favour of the complainant, and as a matter of fact it had been stolen from his house.

Thus, as per the learned counsel, the said stand of the petitioner-accused was required to be put to the complainant by way of cross-examination, which his counsel had not done, in fact leading to

change of counsel.

Learned counsel for the respondent-complainant, on the other hand, first submits that as stated in the impugned order, the complainant was cross-examined by the counsel for the petitioner-accused on three dates, i.e. 03.06.2017, 13.07.2017 and July 20, 2017, and as such he had been examined at length as noticed in the impugned order, and therefore the subsequent filing of the application under Section 311 Cr.P.C., for recalling the complainant for re-examination, was only a delaying tactic.

Though this Court had been of the opinion that granting one opportunity to the petitioner to recall the complainant to examine him only on that particular point as has been referred to herein above, would not prejudice the respondent-complainant, however, learned counsel for the respondent further relies upon a judgment of the Supreme Court in the case of **Indian Bank Association and others v. Union of India and others**, 2014 (5) SCC 590, specifically pointing to para 16 of the judgment, which reads as under:-

“16. We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. In other words, there is no necessity

to recall and re-examine the complaint after summoning of accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.”

In view of what has been held by the Supreme Court herein above, to the effect that in fact there is no need to recall and reexamine a complainant after summoning the accused, but that already having been done in the present case, with the complainant having already been cross-examined at length, I see no reason to interfere with the impugned order.

Consequently, this petition is dismissed.

However, naturally, while adjudicating upon the matter, the learned trial court would look at the issue in its totality, including whether the accused had at the initial stage also refuted signing the cheque etc., and whether in such circumstances the onus would shift onto the complainant, to

prove the liability of the accused, in discharge of which he had issued the cheque, (in terms of Section 118 of the Negotiable Instruments Act, 1881).

(AMOL RATTAN SINGH)

JUDGE

16.05.2018

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Whether reasoned/speaking: Yes

Whether reportable: Yes