

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 652 of 2018**

- Navneet Shrivastava S/o Late Ganesh Shrivastava Aged About 30 Years R/o Bajrang Nagar, Amapara, P.S. Saraswati Nagar, Raipur, District- Raigarh, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Law And Legislative, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur, Chhattisgarh
2. Smt. Urvashi Thakur W/o Late Ramswaroop Thakur Aged About 66 Years Shivaji Chowk, Masjid Road, Santoshi Nagar, Tikrapara, P.S. Tikrapara, Raipur, District- Raipur, Chhattisgarh
3. Smt. Sarita Shrivastava W/o Late Ganesh Shrivastava Aged About 50 Years R/o Bajrang Nagar, Amapara, P.S. Saraswati Nagar, Raipur, District- Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Shrawan Agrawal, Advocate
For Respondent/State	:	Shri R.K. Bhagat, Dy. GA
For Respondent No.3	:	Shri Sunil Verma, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****06/03/2019**

1. Heard.
2. The present petition is against the order dated 08.10.2018 and subsequent warrant issued against the petitioner for his appearance before the Court be cross examined.

3. The short facts of this case are that one complaint was filed by Smt. Urvashi Thakur respondent No.2 against the respondent No.3 Smt. Sarita Shrivastava and the said complaint was registered under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act). During the course of trial on 04.07.2018 the complainant Smt. Urvashi Thakur was examined. During her cross-examination certain documents were confronted to her at that juncture learned Magistrate stopped the cross-examination and instead ordered for examination of Navneet Shrivastava, the petitioner herein, who was witness to the document, which was marked as Ex. D-1. The document was scribe as Ikrarnama. On subsequent date on 09.07.2018 the complainant cross-examination was not conducted and Navneet Shrivastava was examined as a witness by the Court and thereafter was discharged. Subsequently, on 11.07.2018 the complainant again entered into witness box and was cross-examined, thereafter, evidence of the complainant was closed. Subsequent thereto the plea of the accused was recorded and the defence witnesses were also examined. The defence witnesses were examined on 08.10.2018 on that date an oral request was made by the complainant that Navneet Shrivastava could not be cross-examined and he is required to be cross-examined. The Court acceded to the request of the complainant and asked for appearance of Navneet Shrivastava for his cross-examination. Subsequently, on 13.11.2018 since the petitioner/witness did not appear as such bailable warrant was issued.
4. The entire these proceedings are under challenge by the witness as petitioner, who has been summoned.

5. Learned counsel for the petitioner submits that the procedure which has been adopted by the Court below is completely unique and devoid of all legal procedure. He further submits that the way the witness has been summoned it is uncalled for as Navneet Shrivastava was called by the Court and not by any party, therefore, any oral prayer for cross-examination could not have been allowed after entire evidence was closed as it will defeat the right of the parties. He further submits that the gross illegality can be inferred from the fact that though the oral request was made and allowed to cross-examine the witness i.e. the petitioner herein yet on a subsequent date an application was filed by correction of the date which would amount to show kind of procedure adopted by the Court below. The Counsel submits that these procedures cannot be followed as it defeat the right of the petitioner and he cannot be compelled to appear in such a manner against the procedure & law and the practice which are normally followed in the Court.
6. Despite service of notice no representation is made by respondent No.2 Smt. Urvashi Thakur who is the complainant in the case before the Court.
7. I have heard learned counsel for the parties and perused the documents and record.
8. On the earlier date, this Court has called for the record of the Court below. The photocopy of the entire record has been sent. Perusal of the record would show that on 04.07.2018 the complainant was examined. During her cross-examination certain documents were confronted for cross-examination. Further

the application under Section 45 of the Indian Evidence Act, 1872 (hereinafter referred to as the Act, 1872) was also filed, which was dismissed and instead the Court has ordered to call for the witness i.e. the petitioner Navneet Shrivastava, who was a witness to the said document which was marked as Ex. D-1 during cross examination. Since the photocopy is been placed, it is also not clear whether the said document was the original one or not?

9. Be that as it may, subsequently the order-sheet would show that on 09.07.2018 Navneet Shrivastava was examined by the Court. Perusal of the statement would show that certain questions were put forth by the Court and thereafter it was closed. Necessarily, as such, therefore, it appears that the witness was examined in exercise of power under Section 165 of the Act, 1872, and the order-sheet would show that after he was examined by the Court he was discharged. Counsel for both the parties including the complainant were present, they did not whisper their desire or called for any examination and cross-examination of the same. Primarily since petitioner was examined as a Court witness the examination-in-chief, cross-examination and re-examination as contemplated under Section 137 of the Act, 1872 was not followed and several dates there after passed by. Further the order-sheet of 08.10.2018 would show that after closure of the defence witness an oral statement was made by the complainant counsel that he wants to cross-examine the witness and the same was allowed. Before this Court copy of application to call Navneet Shrivastava as a witness has been placed, which prima facie on perusal shows that some overwriting was made and the date of 08.10.2018 was written

subsequently. However, the order-sheet of 08.10.2018 do not affirm the same that it was filed on 08.10.2018. If such application was moved on 08.10.2018, it should have been observed in the order-sheet. Surreptitiously accepting an application without recording the same in the order-sheet creates a doubt about the conduct of the trial as the parties who are before the Court may lose their faith over the system.

10. Over all perusal of the order-sheet and the way the case was conducted it is not at all satisfactory. In the order-sheet of 05.07.2018, the Court has asked for evidence of the petitioner. Thereafter, the Court wanted to examine the witness, the petitioner, thereafter he was examined on 09.07.2018 by the Court and was discharged. On that date neither the complainant nor the accused expressed their desire to examine or cross-examine the petitioner, it is all of a sudden on 08.10.2018 when the defence evidence was over, on an oral request of the complainant to cross-examine the witness i.e. the petitioner herein, the same was allowed. Recalling a witness though is inherent power of court but has to be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case. The exercise of the said power cannot be dubbed as filling in a lacuna in a case. The facts would disclose that till the examination of the defence witnesses was over the complainant was sitting on the fence and it was only on the closure of the evidence he came into the field.

11. The order-sheet also reflects that without much appreciation and without assigning any reason on the oral request, the Court allowed the complainant to

cross-examine the court witness. Necessarily, therefore, it appears that it was for filling up the lacuna by complainant which may cause a serious prejudice to either of the parties. The right of the petitioner who was examined as a court witness other than witness of either parties cannot be shelved. In a result, the order dated 08.10.2018 to allow the cross-examination of the witnesses apparently appears to be without any valid reasoning as the orders are to be reasoned. Accordingly, the same is set aside. Consequently, the subsequent summons and the warrant which has been issued to the petitioner is also set aside. The Court below shall also be obliged to decide the case on the basis of the available evidence on record. This order will govern both the cases i.e. criminal complaint case Nos. 238 & 239 of 2013.

12. Accordingly, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

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