

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-18843 of 2017

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Date of decision:23.01.2019

Sandeep Chaudhary

...Petitioner

v.

M/s Excellent Services and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ankush Chaudhary, Advocate for the petitioner.

Mr. Deepender Singh, Advocate for the respondents.

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Inderjit Singh, J.

The petitioner has filed this petition under Section 482 Cr.P.C. for setting aside order dated 28.03.2017 passed by learned Additional Sessions Judge, Gurugram, whereby the revision petition filed against the order dated 24.01.2017, dismissing the application under Section 311 Cr.P.C. of the accused/revisionists for recalling and cross-examining the complainant (petitioner), was allowed.

Notice of motion was issued in this case.

Mr. Deepender Singh, learned Advocate has appeared on behalf of the respondents and contested this petition.

I have heard learned counsel for the parties and have gone through the record.

A perusal of the record shows that during the pendency of complaint, an application under Section 311 Cr.P.C. was filed in the complaint case filed by Sandeep Chaudhary-complainant against accused M/s Excellent Services and Bhuwan Chand Joshi under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act').

The learned Judicial Magistrate Ist Class, Gurugram, dismissed the application. As per the record, CW-1 has been examined in examination-in-chief, but the accused have not cross-examined him despite giving reasonable opportunity, then the trial Court declared the cross-examination as nil. Later on, an application was filed for re-examination of CW-1, but that application was dismissed by the learned Judicial Magistrate Ist Class, Gurugram. A revision petition was filed before the learned Sessions Court against this order and the learned Additional Sessions Judge, Gurugram, set aside the order and gave one effective opportunity to cross-examine the complainant subject to costs of ₹10,000/- to be paid by the revisionists to the complainant before conducting the cross-examination of the complainant.

Against this order, this petition has been filed under Section 482 Cr.P.C. I have gone through the record. From the record, I find that CW-1 has been examined in examination-in-chief, but he was not cross-examined despite giving opportunities in complaint case filed under Section 138 of the NI Act. The learned trial Court has written opportunity given nil. If CW-1 complainant is not cross-examined, then the accused will suffer irreparable loss and great prejudice will be caused to them as the statement of the complainant will be treated as remained unchallenged. Regarding the

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negligence of the accused to cross-examine the witness, the learned Additional Sessions Judge has already granted one effective opportunity to cross-examine CW-1 complainant and also awarded costs. By giving one effective opportunity, the learned Additional Sessions Judge has not committed any illegality. In the interest of justice, this opportunity should have been given to the accused by the learned trial Court. As no illegality has been committed, therefore, no ground is made out for quashing the impugned order dated 28.3.2017 passed by the learned Additional Sessions Judge Gurugram.

No other point has been argued by learned counsel of any of the parties.

Therefore, finding no merit in this petition, the same is dismissed and the impugned order dated 28.03.2017 passed by the learned Additional Sessions Judge, Gurugram is upheld.

January 23, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No