

S.No.132

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

CRM-M-13057 of 2019 (O&M)

Date of Decision:20.03.2019

Brij Bhushan AroraPetitioner

Vs.

Pardeep Kumar SingalRespondent

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Vishal Aggarwal, Advocate
for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition seeking quashing of order dated 22.11.2018 (Annexure P.2) and order dated 18.02.2019 (Annexure P.4) passed by Judicial Magistrate Ist Class, Ludhiana in complaint No.1830 dated 09.02.2018 registered under Section 138 of Negotiable Instruments Act, 1881 for permitting the petitioner to cross-examine the complainant.

In view of the nature of the order which this Court intends to pass, the Court does not find it necessary to issue any notice to the opposite side. Hence, the present petition is being disposed of without issuance of the notice to the respondent.

Learned counsel for the petitioner submits that the trial Court has wrongly closed the opportunity for the petitioner to cross-examine the complainant vide the impugned order, in the absence of the petitioner and his counsel. It is submitted by the counsel that the case was fixed for 08.08.2018. On that date, the complainant had not come present to the Court. In normal course, the complaint should have been dismissed on that date itself. However, the same was adjourned for 21.09.2018. On 21.09.2018, although witness of the complainant was present.

However, counsel for the petitioner could not cross-examine him. Therefore, adjournment was prayed for. Accordingly, the case was adjourned to 22.11.2018. But, by inadvertent mistake, the petitioner as well as his counsel wrongly noted the date to be 29.11.2018. Hence, on 22.11.2018 neither the petitioner nor his counsel was present before the trial Court. Therefore, the witness of the complainant could not be cross-examined on the said date. It is submitted by the counsel that the absence of the petitioner or his counsel and, consequent non-cross-examination of the witness of the complainant was not intentional; but the same has resulted from an inadvertent mistake.

After coming to know of the denial of opportunity of cross-examination vide order dated 22.11.2018, the petitioner filed an application before the trial Court; for recalling of the order and praying for grant of an opportunity to cross-examine the witness of the complainant. However, the same was also declined by the Court below vide order dated 18.02.2019, primarily, on the ground that the trial Court had no jurisdiction to review its own orders.

Counsel for the petitioner has further submitted that the complainant has otherwise closed his evidence. The petitioner needs only one effective opportunity to cross-examine the witness of the complainant. This cross-examination can be undertaken by the petitioner on one date only. Hence, in the interest of justice, the opportunity deserves to be granted to the petitioner to cross-examine the complainant and his witness.

Having perused the file and heard the learned counsel for the petitioner, this Court does not find any ex-facie illegality in the order

passed by the trial Court. However, since the petitioner is an accused in the case, lest he should have any impression, though misconceived, that he has not been granted proper opportunity to defend himself, it would not be unjustified if the petitioner is granted one effective opportunity to cross-examine the complainant and his witnesses examined before the Court, however, by putting him to some financial burden.

Accordingly, the present petition is disposed of with a direction to the trial Court to grant one effective opportunity to the petitioner to cross-examine the complainant and his witnesses, subject to payment of Rs.5,500/- as cost by the petitioner. The cost is ordered to be deposited with the Institute for Blind, Sector-26, Chandigarh.

It is further clarified that the petitioner shall be granted the opportunity aforesaid, only after he presents before the trial Court the receipt of having deposited the cost, as mentioned above.

March 20, 2019
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No