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

**CRM-M-20923-2019
Date of decision-08.05.2019**

Major Singh and another

....Petitioners

Vs.

Amit Verma

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Abhijeet P.S.Chaudhary, Advocate for the petitioners.

MANOJ BAJAJ, J.

This petition under Section 482 Cr.P.C has been filed by the petitioner (accused) to challenge the order dated 09.04.2019 (Annexure P-3), whereby the Judicial Magistrate First Class, Ludhiana proceeded to dismiss his application under Section 311 Code of Criminal Procedure for recalling witness Amit Verma (complainant) for further cross-examination. The trial pertains to complaint brought by respondent under Section 138 of Negotiable Instruments Act, 1881.

The respondent filed a criminal complaint bearing No.COMA-7574/2017 dated 03.07.2017 under Section 138 of Negotiable Instruments Act, 1881, against the petitioner on the ground that the cheque bearing No.201330 dated 22.05.2017 for sum of Rs. 2,50,000/- drawn at ICICI Bank Ltd. Jamalpur, Samrala Road, Ludhiana issued in favour of the complainant stood dishonoured because of "insufficient funds". After appearance of the accused in the said complaint case, the witnesses brought by the complainant

were cross-examined. In all there were five witnesses examined by the complainant in support of his case and after completion of their cross-examination, evidence was closed on the statement of the complainant on 08.02.2019. Thereafter, the statement of accused was recorded under Section 313 Cr.P.C on 13.02.2019. An application under Section 311 Cr.P.C was filed by the accused for recalling complainant for further cross-examination. The said application is Annexure P-2. The ground raised in the application was that since CW-5, namely, Vikrant Sharma who already stands examined, was not cited as a witness in the list of witnesses filed with the complain, however, his cross-examination by the defence counsel introduced certain new facts on record, and therefore, in order to bring the true facts, further cross-examination (re cross-examination) of the complainant (CW-1) is necessary. It is pleaded that in case the permission is granted no prejudice shall be caused to the complainant, however, denial would cause prejudice to the accused. The said application was opposed by filing reply on behalf of the complainant, however, the copy of the same is not on record, but the impugned order contains the contents of the reply.

The trial Court after examining the pleadings of both the sides proceeded to dismiss the application under Section 311 Cr.P.C vide impugned order dated 09.04.2019.

Learned counsel for the petitioner/accused has contended that in view of the Section 138 of Indian Evidence Act, 1872, re-cross-examination of the accused is necessary and the trial Court has committed an error in not considering the said provision and wrongly declined the prayer for recalling

CW-1-Amit Sharma for further cross-examination.

It is further contended that the witness CW-5 was not mentioned in the list of witnesses which is on record with the complaint as Annexure P-1 wherein only three witnesses were mentioned by the complainant. Lastly, it is argued that in case the permission is granted, no prejudice shall be caused to the complainant.

After hearing learned counsel for the petitioner, this Court finds that application brought by petitioner under Section 311 Cr.P.C does not contain a ground that further cross-examination of complainant is mandatory in view of Section 138 of Indian Evidence Act, 1872. Even the contents of the petition do not contain any such ground much less re: Section 138 of Indian Evidence Act, 1872. In support of his argument, learned counsel for the petitioner has placed reliance upon judgment passed by this Court titled as “Kesar Singh Vs. Jagdish Chander”, 2018 (4) R.C.R (Criminal) 981.

Since this issue raised by the petitioner relates to the question of law, therefore, it needs to be examined. At this stage, it will be relevant to peruse Section 138 of Indian Evidence Act, 1872 which reads as under:-

“138. Order of examinations.—Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined. The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief. Direction of re-examination.—The re-examination shall be

directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

A plain reading of the above establishes that this provision defines the sequence for examination of the witnesses in a case before the Court. As per the first part, (i) the person who has brought a cause before the Court is supposed to produce his witness for examination-in-chief; (ii) thereafter, in case the adverse party wishes to cross-examine the witnesses, the same shall be conducted; (iii) and lastly, the party who brought the witnesses has been given a right to re-examine the said witness in case it so desires.

The last part of the above provision is inserted as an explanation which confines the re-examination of the witness only to the limited extent, i.e. for offering explanation of matter referred to in cross-examination, and if the Court permits further re-examination of the said witness, the adverse party shall have the right to further cross-examine the said witness. It leaves no room for any doubt that Section 138 of Indian Evidence Act, 1872 cannot be pressed into service at the instance of the adverse party (accused) for re-examination of a prosecution witness. Of course the only exception to this provision lies in Section 246 Code of Criminal Procedure, where in a warrants case based upon a complaint, a right has been given to the accused to recall the prosecution witness for further cross-examination. However, the present case is a summons case and therefore, does not fall within the ambit

of Section 246 Cr.P.C. Therefore, reliance placed by the learned counsel on the above provision is completely misplaced. The judgment relied upon by the counsel has been perused and the same, does not contain any reference to Section 138 of Indian Evidence Act, 1872. This Court proceeded to allow the application under Section 311 Cr.P.C on the basis of the facts and grounds raised in the said case.

Learned counsel for the petitioner has further relied upon judgments passed by this Court in “M/s Shareen Hire Purchase Pvt.Limited Vs. Kulwinder Kaur”, 2011 (3) R.C.R.(Criminal) 299 and “Khatta Singh Vs. C.B.I.Chandigarh and others” 2018 (3) R.C.R.(Criminal) 708 and the perusal of the same would reveal that the issue contained in the cases in respect of exercise of powers under Section 311 Cr.P.C and there is no reference in respect of the provisions of Indian Evidence Act, 1872.

As far as powers under Section 311 Cr.P.C are concerned, there is no doubt that discretion has been conferred upon the trial Court to summon/recall and re-examination any witness.

Now if the facts and circumstances of the present case are analyzed, it is noticed that the complainant had examined all the witnesses in support of his case and the application was filed at a stage when the case already stood fixed for defence evidence. The other argument raised by the learned counsel is that the name of CW-5 was not contained in the list of witnesses, therefore the said witness could not have been examined. List of witnesses attached in the present complaint has been perused, which clearly

mentions a clause about examination of any other witness with the permission of this Hon'ble Court. This clause makes it abundantly clear that complainant had left it open to examine any other relevant witness to prove the case against the accused. Apart from it, the said witness CW-5 Vikrant Sharma stood examined who was offered for cross-examination and a lengthy cross-examination was also conducted. It would make it absolutely clear that the accused (petitioner) did not raise any objection to his examination and by his act and conduct accepted his examination as a witness by conducting the cross-examination. Since the witness already stood examined completely, therefore, the argument raised about validity of the said witness cannot be permitted at this stage.

Further the perusal of the impugned order reveals that the trial Court has dealt with each and every argument of the petitioner and has given valid reasons for refusing to exercise discretionary power under Section 311 Cr.P.C, therefore, this Court does not find any ground to interfere with the impugned judgement dated 09.04.2019 (Annexure P-3).

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

08.05.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No