

CRM-M-5646-2018(O&M) 1

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

**CRM-M-5646-2018(O&M)
Date of decision: 16.11.2019**

Ashok Kumar Garg

.....Petitioner

Versus

Indian Overseas Bank

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Gourav Goel, Advocate for the petitioner
Mr. Nitin Jain, Advocate for the respondent

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by learned Judicial Magistrate First Class, Ludhiana dismissing the application under Section 311 Cr.P.C for recalling CW1-Inderjit Singh for the purpose of further cross-examination has been rejected by the learned Trial Court.

Of course, first reason given by the learned Judicial Magistrate First Class that it would amount to review is erroneous. However, this Court with the able assistance of the learned counsel for the parties has gone through the file. Even the Judicial Magistrate has found that the conduct of the accused is inappropriate. It may be noted here that a cheque in question is for a sum of Rs. 30,54,000/- which on presentation was dishonoured, resulted in filing of the complaint under Section 138 of Negotiable Instruments Act, 1881. The complainant-Bank is a nationalized Bank. The complaint filed under Section 138 of Negotiable Instruments Act is pending in the Court for last 5 years. The Branch Manager -Inderjit Singh appeared on behalf of complainant and tendered his affidavit in lieu of evidence in

chief on 11.4.2017. On the request of the counsel for the accused, case was adjourned to 12.5.2017. On 12.5.2017 again Inderjit Singh was present in Court and was partially cross-examined. The case was thereafter adjourned to 13.6.2017. On 13.6.2017, Inderjit Singh once again remained present in Court from 9:30 A.M to 4:00 P.M. However, counsel did not come present to cross-examine the witness. Thus, the Court was compelled to pass an order treating the cross-examination, already carried out on 12.5.2017, to be complete declining further opportunity to cross-examine. Petitioner filed an application under Section 311 on 15.6.2017 which was dismissed by the Court on 12.12.2017. The petitioner made a specific assertion that application under Section 311 was filed on 13.6.2017 which is factually incorrect because the application was filed on 15.6.2017 as pointed out by learned counsel for the respondent by producing certified copy of the application. Learned Judicial Magistrate dismissed the application after noting that sufficient opportunity has already been granted to cross-examine Inderjit Singh. Complaints under Section 138 of Negotiable Instruments Act are normally to be tried as a summons case, to be disposed of expeditiously. As noticed above, this complaint is pending for the last five years. Inderjit Singh has already been cross examined at sufficient length by the counsel appearing for the accused. In these circumstances, this Court is not inclined to interfere with the order passed.

Dismissed.

16.11. 2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)

JUDGE

Yes / No

Yes / No