

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

CRR-413-2018 (O&M)
Date of Decision:-03.05.2019

Satnam Singh

... Petitioner

Versus

Surjit Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Hardeep Singh Sandhu, Advocate
for the petitioner.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court assailing order dated 2.12.2017 whereby an application under Section 311 Cr.P.C. filed by the petitioner has been dismissed by the Court of learned Additional District Judge, Jalandhar.
2. The petitioner/accused faced trial before the Court of Judicial Magistrate Ist Class, Phillaur for an offence under Section 138 of Negotiable Instruments Act wherein he was held guilty and sentenced to undergo rigorous imprisonment for 2 years and was imposed fine amounting to ₹2,000/- vide judgment dated 19.07.2016.

3. The petitioner, aggrieved with the aforesaid judgment preferred an appeal in the Court of Sessions, Jalandhar. During the course of pendency of this appeal, which was pending in the Court of learned Additional District Judge, Jalandhar, the petitioner filed an application under Section 311 Cr.P.C. (Annexure P-2) seeking recalling of the complainant so as to enable the petitioner to further cross-examine him.
4. The complainant filed reply to the aforesaid application wherein apart from raising objection regarding application having been filed belatedly, a stand was taken that lengthy cross-examination of the complainant had already been conducted before the trial Court and that the application had been moved on false and frivolous grounds.
5. The learned Court of Sessions after considering arguments dismissed the application vide impugned order dated 2.12.2017 which has been assailed by filing present petition.
6. Learned counsel for the petitioner while assailing impugned judgment has submitted that the counsel representing the petitioner before the trial Court had not effectually cross-examined the complainant and that the short-comings were noticed by the counsel representing him before the Appellate Court, which necessitated filing of an application under Section 311 Cr.P.C. It has further been submitted that questions sought to be put to the complainant in further cross-examination could not be set out in the application under Section 311 Cr.P.C. as the same would have disclosed the defence of the accused and that withholding of the said questions

could not have been made a ground of dismissal of his application. Leaned counsel for the petitioner in support of his submission places reliance upon following judgments:-

- i. Mannan Sr. and others vs. State of West Bengal and another, 2014(13) SCC 59.
- ii. Rajaram Prasad Yadav vs. State of Bihar and another, 2013 AIR (SC) (Cri) 1746.
- iii. Vikas Sureshrao Waghmare vs. Moreshwar Bhuausaheb Kadam, 2011(2) RCR (Criminal) 632.

7. Opposing the petition, learned counsel for the respondent has submitted that an application under Section 311 Cr.P.C. cannot be allowed merely on the asking particularly at the appellate stage and that there has to be some convincing ground for allowing the same and that the same can only be allowed if the petitioner is able to establish that the evidence sought to be produced is necessary for just adjudication in the matter. It has been submitted that the only ground set forth in the application is that the counsel representing the petitioner earlier before the trial Court had not put all the questions to the complainant whereas such a ground cannot be held to be a valid ground to permit further cross-examination of the complainant and that too at the appellate stage. The learned counsel in this context cites AG vs. Shiv Kumar Yadav and Another, 2015 AIR (SC) 3501.

8. I have considered rival submissions addressed before this Court.

The concluding paragraph of impugned order reads as follow:-

“So from the perusal of the file, it is clear that accused had cross-examined CW1 Surjit Singh at length. Learned counsel for appellant stated that he wants to put certain questions to the complainant, but appellant failed to disclose that what questions, he wants to put to the complainant. CW1 Surjit Singh was cross-examined on 20.08.2014. Thereafter this complaint was decided by the learned trial Court on 19.7.2016. So complaint was decided after more than two years from the date of the completion of the cross-examination of CW1. So earlier appellant had not filed any such application in the learned trial Court. Thereafter present appeal was filed. Thereafter respondent appear and thereafter record was called and appeal was fixed for main arguments. So when present appeal was filed on 16.9.2016 even then appellant had not filed any such application. So appellant failed to prove that why earlier he had not filed application. So application filed by appellant is without merit, hence dismissed.”

9. A perusal of the application filed by the petitioner under Section 311 Cr.P.C. (Annexure P-2) before the Court of Sessions shows that the only ground set forth is that the counsel of the accused representing him before the trial Court had left out several questions which were

to be put to the complainant. Para No.2 of the application wherein the ground has been set forth reads as follows:-

“That there are several questions, which were left by the previous counsel while cross-examining the complainant namely Surjit Singh. These questions have a bearing upon the merits of the case, moreover, the question/cross-examination is required to be rebut the statutory presumption under Section 139 and 118 of N.I. Act.”

10. The aforesaid ground as set forth in the application is rather too vague to justify acceptance of an application under Section 311 Cr.P.C. and that too at the appellate stage when the petitioner already had an opportunity to cross-examine the complainant at length before the trial Court. The mere fact that the complainant changed his counsel at the appellate stage who felt that some more questions ought to have been asked during cross-examination of the complainant would not justify recalling of the complainant during the course of appeal. Hon'ble the Supreme Court in AG vs. Shiv Kumar Yadav's case (supra), where the High Court in revision petition had accepted an application under Section 311 Cr.P.C. and had ordered for recall of the witness, set aside the order of the High Court while observing that no finding could be recorded that the counsel appointed by the accused earlier was incompetent and that mere change of counsel cannot be a ground to recall a witness especially when the counsel had been given due opportunity of cross-examination. Examining the present case in light of ratio of

above cited judgment more particularly keeping in view the fact that earlier counsel had duly cross-examined complainant at the stage of the trial, this Court does not find any valid ground to interfere with the impugned order vide which the application filed by the petitioner/accused under Section 311 Cr.P.C. has been dismissed.

11. There is no merit in the revision petition and the same is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

03.05.2019
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No