

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

CRM-M-39437-2019 (O&M)

Date of decision-24.09.2019

Pankaj Bhatia

....Petitioner

Vs.

Parveen Kumar

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Namit Khurana, Advocate for the applicant-petitioner.

MANOJ BAJAJ, J.

CRM-29671-2019

Application is allowed as prayed for.

Annexures P-6 and P-7 are taken on record subject to all just exceptions.

Main case

Petitioner-Pankaj Bhatia has filed this petition challenging the order dated 02.08.2019 (Annexure P-5) passed by learned Judicial Magistrate First Class, Yamuna Nagar whereby application under Section 311 Cr.P.C filed by the petitioner was dismissed.

The petitioner is an accused in criminal complaint No.260-2015 dated 12.02.2015 registered under Section 138 of Negotiable Instruments Act, 1881.

Learned counsel for the petitioner contends that by way of the impugned order, the application filed by the accused under Section 311 Cr.P.C. for recalling the complainant for his cross-examination was wrongly

declined by trial Court and it has caused prejudice to him. He submits that the complainant on 05.01.2019 had adduced in evidence certain documents before the trial Court and the tendering of those documents were objected by the accused (petitioner). He submits that on the same day instead of offering the said witness for cross examination to the petitioner, the trial Court proceeded to record the statement of accused under Section 313 Cr.P.C. He submits that one of the documents submitted by him is Exhibit C-7, the alleged copy of the accounts ledger and therefore, the cross-examination of complainant is necessary. He has invited the attention of the Court to the said statement of accounts which is on record as Annexure P-2. He submits that the said ledger not signed by anyone much less the petitioner. According to him, the specific ground raised in his application under Section 311 Cr.P.C. in this regard was ignored by the trial Court while declining the prayer for recalling the complainant for cross-examination.

At this stage, this Court does not find it necessary to issue notice to the complainant as the issue raised in this petition is being decided on the strength of the material which is already on record before the trial Court and therefore, the summoning of the complainant would be a formality which may put extra burden upon him. Besides, the order would not cause any prejudice to the complainant as the limited prayer made by the petitioner is to cross-examine him.

After hearing learned counsel for the petitioner, this Court finds that there is merit in the contentions raised by learned counsel. The order dated 05.01.2019 clearly reveals that Judicial Magistrate First Class,

Yamuna Nagar proceeded to allow the complainant to adduce in evidence certain documents. The statement of the complainant is placed on record as Annexure P-6 which mentions the objections raised by the accused. It is further clear from the order passed by trial Court that on the same date it proceeded to record the statement of accused under Section 313 Cr.P.C. It is settled law that whenever witness appears and adduces evidence, the said witness has to be offered to the defence/opposite party for cross-examination. The trial Court instead of correcting the said error by law in allowing the application under Section 311 Cr.P.C, proceeded to dismiss the same on the ground that the objection raised by the accused would be considered at the time of final adjudication of the case. The said approach is erroneous in law and therefore, the impugned order dated 02.08.2019 is not sustainable.

In view of the above, impugned order dated 02.08.2019 is set aside and it is ordered that the trial Court shall offer one effective opportunity to the petitioner for cross-examination of the complainant either on the next date or may fix any other date. It is made clear that in case, any of the averments/arguments made by the petitioner are contrary to the record of the case or misleading, it shall be open for the complainant to seek recalling of this order.

Petition is allowed.

(MANOJ BAJAJ)
JUDGE

24.09.2019

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