

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

CRM-M No.47085 of 2019 (O&M)

Decided on: 08.11.2019

Anil Kumar

....Petitioner

Versus

Atul Khanna

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Amit Jhanji, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting-aside the order dated 06.09.2019 (Annexure P-8) passed by the trial Court vide which the application filed by the petitioner/complainant in complaint No.NACT/2763/2015 dated 05.10.2015 was dismissed with a further prayer to allow the application and permit the petitioner to further cross-examine the defence witnesses of the respondent, who appeared as DW1, DW5 and DW6.

Brief facts of the case are that the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') on account of dishonouring of a cheque of Rs.9 lacs.

It is worth noticing here that the petition is pending since 2015 and prior to filing the instant application under Section 311 Cr.P.C., the petitioner has filed two other applications for leading defence evidence. In the first application, it was prayed that he may be permitted to tender the statement of the bank account of the

complainant and the said application was allowed by the trial Court. Again, the petitioner moved the second application with a prayer to re-examine himself as a witness and the same was allowed by the trial Court vide order dated 11.07.2018.

The petitioner moved the third application with a prayer that in the meantime, the complainant/accused has recorded his defence evidence in which three witnesses i.e. DW1 – Yogesh Kumar, DW5 – Suman Khanna and DW6 – Atul Khanna have appeared and since the petitioner/complainant was allowed to appear as his own witness vide second application, he may be permitted to further cross-examine these witnesses.

Counsel for the petitioner has submitted that the petitioner may be permitted to further cross-examine the aforesaid three witnesses as by the time he re-examined himself as his own witness, the statement of these witnesses were recorded and therefore, certain questions need to be examined. It is further submitted that the trial Court vide order dated 06.09.2019 dismissed the application. The operative part of the impugned order reads as under:-

“...I have heard the learned counsel for the parties and have gone through the case file.

Considered. By way of present application complainant wants to recall D.W.1 Yogesh Kumar, D.W.5- Suman Khanna and D.W.6 Atul Khanna for the purpose of cross-examination after the statement of C.W.1 Anil Kumar.

Section 311Cr.P.C is very enabling provision. It must not be used in routine manner. It is to be used in exceptional and rare circumstances, in the interest of

justice. Perusal of the file reveals that the case was fixed for Defence Evidence for the first time for 11.08.2016 and the accused also filed list of eight witnesses to be examined in defence on 16.08.2016. However, on 23.08.2015 affidavits of D.W.1 and D.W.2 were tendered but the application U/s 311 Cr.P.C. was moved by the learned counsel for the complainant for tendering certain documents which was allowed by the court on the same day. Thereafter statement of accused U/s 313 was re-recorded and the case was fixed for defence evidence of the accused for 14.09.2016. Perusal of the file shows that the accused availed more than 30 effective opportunities i.e. taking span of approximate one and a half year to conclude his evidence but failed to do so and in the meanwhile counsel for the complainant again moved application U/s 311 Cr.P.C. on 21.02.2018 seeking permission to examine himself as witness which was allowed by the court on 11.07.2018 and thereafter the case was again fixed for complainant evidence and after the conclusion of the same on 05.03.2019, the case statement of the accused U/s 313 Cr.P.C. was rerecorded and the case was fixed for defence evidence for 20.03.2019. On the said date i.e. 20.03.2019 the present application is moved by learned counsel for the complainant for recalling the defence witnesses for their cross-examination. No reason or ground of recalling of said witnesses has been mentioned. No particular questions or any aspect on which further cross-examination is to be conducted has been mentioned in the application. In my considered view complainant is lingering on the matter again and again by moving one or the other application.

Hence, no ground is made to allow the application. Consequently dismissed. Now to come up on 19.09.2019 for defence evidence subject to last opportunity.”

After hearing the counsel for the petitioner, I find no merit in the present petition for the following reasons:-

(a) A perusal of the third application (Annexure P7) show that the same is totally vague and give no reason as to why further cross-examination of DW1, DW5 and DW6 is required. The only reason given is that they need to be re-called and cross-examined subsequent to the cross-examination by the respondent/accused on the petitioner as he appeared as his own witness, after his second application was allowed.

(b) The present petition is pending since 2015 and admittedly, the petitioner had, on earlier two occasions, moved an application under Section 311 Cr.P.C., which were allowed and therefore, the present application which moved for cross-examination of three defence witnesses is just to delay the proceedings as no reason is assigned.

It is well settled principle of law that after the prosecution evidence is concluded, the statement of the accused is recorded under Section 313 Cr.P.C., he is granted permission to lead his defence evidence to prove his innocence. Mere fact that the complainant was allowed to be re-examined after his second application was allowed do not ipso facto give a right to the petitioner for re-examination of the defence witnesses and the same is not required for the just and fair decision of the case as the accused has produced his defence evidence just to prove his innocence.

(c) The application filed under Section 311 Cr.P.C., is totally vague and nothing is stated in this application as to why and on what points, the defence witnesses need to be re-called.

(d) The trial Court has rightly recorded a finding that the case is pending since 2015 and the case

was fixed for defence evidence on 11.08.2016 and thereafter, the petitioner has moved two applications under Section 311 Cr.P.C. and therefore, the reason given in the application is not bona fide.

In view of what has been discussed hereinbefore, finding no merit, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

08.11.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No