

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

CRM-M-48277 of 2019

Date of decision: 14.11.2019

Lachhman Singh

....Petitioner

Versus

Kundan Lal Bhandari

....Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Surinder Gandhi, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

Prayer in this petition is for quashing order dated 22.4.2019 (P.3) passed by learned JMIC, Ludhiana vide which the cross examination of the complainant was treated as “Nil” as also order dated 15.10.2019 (P.6) passed by learned JMIC, Ludhiana dismissing the application filed by the petitioner under Section 311 Cr.P.C for summoning the complainant for his cross examination.

The respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioner. In the said complaint, the petitioner was summoned to face trial.

It is the case of the petitioner that on 22.04.2019, the petitioner could not cross examine the complainant only because of his counsel being not well as he was suffering from cardiac pain. He was under treatment at Hero DMC Hospital, Ludhiana and was advised complete rest. The request of the petitioner for adjournment was declined by the trial Court and the cross examination of the complainant was treated as “Nil” vide impugned

order dated 22.04.2019.

The petitioner immediately thereafter moved an application dated 18.05.2019 under Section 311 Cr.P.C for recalling the complainant for cross examination but the same has been dismissed vide order dated 15.10.2019 observing that during the course of the trial, the complainant had come present on 27.02.2018, 02.07.2018, 23.10.2018 and 22.04.2019 for his cross examination but the accused failed to cross examine him. It is only on 22.04.2019 after affording three effective opportunities that the trial Court passed the order whereby the cross examination of the complainant was treated as “Nil”.

Learned counsel for the petitioner submits that failure of the petitioner to cross examine the complainant on the aforesaid date was not intentional. It was due to unavoidable circumstances as the counsel for the petitioner was admitted in the Hospital. The petitioner had in fact filed an application seeking adjournment, however, the same got listed with another case filed by the complainant. He submits that the petitioner would be seriously prejudiced if no opportunity is given to the petitioner to cross examination the complainant. He points out that the next date fixed before the learned trial Court is 15.11.2019 and if permitted, the petitioner would positively cross examine the complainant on the date fixed. Besides, it shall not cause any prejudice to the complainant.

On consideration of the totality of the facts and circumstances of this case, order dated 22.04.2019 to the extent of treating the cross examination of the complainant as “Nil” is set aside. The petitioner shall have one opportunity to cross examine the complainant on 15.11.2019.

This shall, however, be subject to petitioner paying a sum of Rs.10,000/- as

costs to the complainant under proper receipt to be tendered before the commencement of cross examination of the complainant.

Petition stands allowed.

November 14, 2019
manoj

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No