

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

CRM-M-49137 of 2019

Date of decision: 22.11.2019

Karam Singh

....Petitioner

Versus

The Assarpur Co-op House Building Society Ltd

....Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Mohit Jaggi, Advocate for the petitioner.

HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C praying for setting aside order dated 04.07.2019 passed by learned JMIC, Patiala whereby cross examination of the complainant was ordered to be treated as Nil; order dated 16.08.2019 passed by JMIC, Patiala dismissing his application filed under Section 311 Cr.P.C for re calling the complainant for cross examination and order dated 04.10.2019 passed by the learned Sessions Judge, Patiala vide which his revision filed against order dated 16.08.2019 has been dismissed.

The petitioner is facing trial in a complaint instituted under Section 138 of the Negotiable Instruments Act. The petitioner was summoned vide order dated 27.04.2015. Examination in chief of CW1-Major Singh Tiwana, Branch Secretary of the Cooperative Housing Building Society-respondent (complainant) was recorded on 24.09.2015.

It is the case of the petitioner that thereafter talks of compromise were initiated between the parties for which cross examination of the complainant did not take place. On 04.07.2019, the case was fixed

for cross examination of the complainant and learned counsel for the petitioner requested for an adjournment, which was declined and vide the impugned order (P.2), cross examination of the complainant was treated as Nil. The petitioner thereafter filed an application under Section 311 Cr.P.C for recalling the complainant for his cross examination, which was dismissed.

The application was primarily dismissed on the ground that the Criminal Court cannot review its own order. The remedy of the petitioner was only to file a revision before the Appellate Court. Revision petition filed by the petitioner against the order rejecting his application under Section 311 Cr.P.C was also dismissed.

Learned counsel for the petitioner states that there was no intention on the part of the petitioner to prolong the trial. The complainant could not be cross examined on 04.07.2019 as the counsel for the petitioner suddenly had to go to Chandigarh due to death of his close relatives. He further states that the delay cannot be attributed to the petitioner and the trial Court ought to have deferred the cross examination by acceding to the request made by the petitioner. He states that the petitioner would be gravely prejudiced if cross examination of the complainant is treated as Nil. He prays that the petitioner may be granted one opportunity for doing the needful and if permitted, the petitioner would cross examine the complainant positively on the next date fixed before the trial Court.

Having perused the averments made in the present petition and on consideration of the totality of the facts and circumstances of this case, the present petition is allowed. The petitioner is granted one opportunity to cross examine the complainant.

This shall, however, be subject to payment of Rs.20,000/- as costs to be paid to the complainant. Before the cross examination is conducted, the petitioner would deposit the costs to the complainant against proper receipt.

This order is being passed without issuing notice to the complainant as it would entail unnecessary delay and expense. Liberty is however, granted to the complainant to challenge the order.

November 22, 2019
manoj

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No