

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-4424-2020 (O&M)
Date of Decision:-31.1.2020

Raj Karan

... Petitioner

Versus

Jagwanti

.. Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Lalit Pardhan, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court challenging order dated 15.1.2020 passed by learned Judicial Magistrate 1st Class, Bhiwani (Annexure P-5), whereby the learned JMIC has dismissed an application filed by the petitioner/accused under Section 311 Cr.P.C.
2. A few facts necessary to notice for disposal of this petition are that the petitioner is being tried by the Court of learned Judicial Magistrate 1st Class, Bhiwani for an offence under Section 138 of Negotiable Instruments Act on the basis of a complaint instituted by the respondent Smt. Jagwanti on the allegation that a cheque issued by the petitioner for an amount of ₹37 lakhs was dishonoured upon its presentation.
3. During the course of leading complainant's evidence, the complainant herself stepped into witness box as CW-1 and was duly cross-examined.

Subsequently upon conclusion of complainant's evidence, the statement of accused was recorded in terms of Section 313 Cr.P.C. Thereafter, when the matter was at the stage of recording defence evidence, an application under Section 311 Cr.P.C. (Annexure P-4) was moved on behalf of the accused/petitioner seeking permission to recall CW-1 Smt. Jagwanti for further cross-examination. The said application was, however, dismissed by the learned Judicial Magistrate 1st Class, Bhiwani vide impugned order dated 15.1.2020 (Annexure P-5), which has been challenged by way of filing the present petition.

4. The learned counsel for the petitioner has submitted that when CW-1 Smt. Jagwanti was cross examined certain material questions could not be put to her and that her further cross-examination is required especially in view of the stand taken by the petitioner in his statement recorded in terms of Section 313 Cr.P.C. It has further been submitted that since it is a case where huge amount is involved i.e. an amount of ₹37 lakhs, a fair opportunity is required to be afforded to the petitioner to defend himself and that the interest of justice demands that the complainant be recalled for her further cross examination.
5. The learned counsel for the petitioner has further submitted that the petitioner is willing to pay costs to the tune of ₹10,000/- in case the petition is accepted. The learned counsel, in order to hammer forth his aforesaid submissions, places reliance upon Sukhpal Kaur Versus Arun Kumar 2016(5) R.C.R. (Criminal) 439; Vikas Sureshrao Waghmare Versus Moreshwar Bhuausaheb Kadam 2011(2) R.C.R. (Criminal) 632 and the judgment passed

by this Court in CRM-M-9092 of 2017 titled as M/s Vimcon Projects Pvt. Ltd. Versus Pawan Kumar decided on 11.5.2017

6. I have considered aforesaid submissions addressed before this Court.
7. A perusal of the application (Annexure P-4) shows that very general kind of averments have been made therein which are to the following effect:

“2. That the complainant has appeared into the witness box as CW-1 during complainant’s evidence but she could not be properly cross-examined on certain material aspects by the counsel for the accused due to lack of briefing by the accused.

3. That after examination of the aforesaid witness, certain new things have come to the knowledge of the accused regarding the antecedents and character of the said witness, which has a significant bearing on the merits of his evidence in present case.

4. That further cross-examination of the aforesaid witness is necessary on certain material aspects recently came to the knowledge of accused so it has become necessary to recall the aforesaid witness for further cross-examination in order to bring the falsity of his deposition to the notice of this Hon’ble Court.”

8. However, it remains unexplained as to which are those material facts which have now surfaced or which were not in the knowledge of the petitioner when the complainant was cross-examined at the earlier stage. Although there can be no dispute that the powers of the Court under Section 311 Cr.P.C. are fairly wide and an application under Section 311 Cr.P.C. can be accepted even at the stage when the matter is fixed for final arguments but there have to be certain circumstances justifying invoking of such powers. An application under Section 311 Cr.P.C. cannot be accepted merely on the asking. There is no dispute as regards the broad principles of law set forth in the judgments cited by the learned counsel for the petitioner.

9. In the present case, the petitioner had earlier not only been afforded proper opportunity to cross-examine the complainant but had also duly cross-examined her. This application was filed after the petitioner had availed 5 opportunities for leading defence evidence. The mere fact that an accused has taken some plea in his statement under Section 313 Cr.P.C. is no ground to recall prosecution witness. The petitioner has not disclosed as to which fact was not known to petitioner when the complainant was cross-examined earlier.
10. This Court does not find any infirmity in the impugned order and the same is upheld. The petition is sans merit and the same is hereby dismissed.

31.1.2020

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No