

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

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CRM-M-52735-2019 (O&M)

Date of decision: 04.02.2020

Ashwani Kumar

.....Petitioner

Versus

Rakesh Joshi

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Rishu Mahajan Advocate for the petitioner.

Mr. Umesh Aggarwal, Advocate for the respondent.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner-accused has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") for quashing of order dated 11.06.2019 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Amritsar in Complaint bearing NACT No.4248/2016 titled as 'Rakesh Joshi Vs. Ashwani Kumar' whereby the application filed under Section 315 of the Cr.P.C. for permitting examination of the accused as his own witness was dismissed and order dated 22.11.2019 passed by the learned Additional Sessions Judge, Amritsar whereby revision petition filed against the above said order was dismissed.

2. For the sake of convenience, the parties are referred to by their description in the complaint filed before learned Judicial Magistrate 1st Class, Amritsar as complainant and accused respectively.

3. The complainant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, "the NI Act") pleading dishonour of cheque No.000075 dated 07.10.2016 issued by the

accused in discharge of subsisting legal liability with remarks "Funds Insufficient" and failure of the accused to pay the amount of the cheque despite service of legal notice dated 26.10.2016. After summoning of the accused, evidence of the complainant was recorded and after completion thereof statement of the accused under Section 313 of the Cr.P.C. was also recorded. After defence evidence was closed, the accused filed application under Section 315 of the Cr.P.C. for permission to examine himself as his own witness which was dismissed by learned Judicial Magistrate 1st Class, Amritsar vide impugned order dated 11.06.2019 and revision petition filed against the same was dismissed by learned Additional Sessions Judge, Amritsar vide order dated 22.11.2019.

4. Feeling aggrieved, petitioner-accused has filed the present revision petition.

5. I have heard Mr. Rishu Mahajan, Advocate learned counsel for the petitioner-accused and Mr. Umesh Aggarwal, Advocate learned counsel for the respondent-complainant and gone through the record.

6. Learned counsel for the petitioner-accused has submitted that the petitioner-accused filed application under Section 315 of the Cr.P.C. for grant of permission to examine himself as defence witness. There is no bar to the filing of the application even after closing of the defence evidence. No prejudice will be caused to the complainant by his examination as defence witness. The impugned orders dismissing the application suffer from material illegality and the same may be set aside. In support of his arguments, learned counsel for the petitioner has placed reliance on the observations in *Shaitan Singh Vs. State of*

Rajasthan: 2005(2) R.C.R. (Criminal) 516 (Rajasthan High Court)
 and ***Prashant Gupta Vs. Ashish Poddar: 2018(1) NIJ 697 (Madhya Pradesh High Court)***.

7. On the other hand, learned counsel for the respondent-complainant has submitted that the petitioner-accused is adopting dilatory tactics to delay the disposal of the case as observed by the Courts below. The application has been filed at very late stage after closing of the defence evidence of the petitioner-accused. The impugned orders do not suffer from any illegality and the petition may be dismissed.

8. Section 315 of the Cr.P.C., which describes accused person to be competent witness and embodies the conditions for his examination as defence witness, reads as under:-

“315. Accused person to be competent witness.--(1)
Any person accused of an offence before a Criminal Court shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that --

- (a) he shall not be called as a witness except on his own request in writing;*
- (b) his failure to give evidence shall not be made the subject of any comment by any of the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.*

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject of any

comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.”

9. In **Shaitan Singh's** case (supra), Rajasthan High Court observed as under:

“3. Section 315 Criminal Procedure Code entitles an accused to make an application for getting himself examined as a witness in his defence and to give evidence on oath in disproof of the charge made against him. Thus an accused has a right to give evidence on oath in disproof of the charge. I fail to see why the Trial Court declined the prayer of the accused-petitioner, to give evidence on oath, only on the ground that case was fixed for judgment. Section 315 Criminal Procedure Code does not create any bar to make such a request at a particular stage of the case. In my view, if the petitioner is permitted to appear as a witness and give his evidence on oath as a witness in his defence would not cause any prejudice to the complainant, inasmuch as the complainant would get an opportunity to cross examine the accused.”

10. The accused can, on his own request, be called as a witness to give evidence on oath in disproof of charges made against him. Trial in a criminal case is intended to discover the truth for just and proper decision of the case. Reference in this regard may also be made to Section 311 of the Cr.P.C. which enables the Court to summon any person as a witness or examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined and mandates the Court to summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the Court at any stage of the case before judgment. The petitioner-accused wants to examine himself in disproof of charge against him. There is no bar to examination of accused as his own witness in disproof of charge against him before judgment. The respondent-complainant will not suffer any prejudice by examination of

the petitioner-accused as his own witness as the respondent-complainant will be entitled to cross-examine him and the respondent-complainant can be compensated by an order for payment of costs for inconvenience, delay and expense caused. The impugned orders suffer from material illegality and ends of justice require that the same be set aside.

11. No doubt, in the application the petitioner-accused did not make any reference to any CD which has been referred to in the present petition but the petitioner-accused has not sought any permission to summon and examine any other witness and the petitioner-accused is entitled to grant of only one opportunity for examining himself as his defence witness.

12. In view of the above discussion, the petition is allowed and the impugned orders are set aside, the application under Section 315 of the Cr.P.C. is allowed and the petitioner-accused is ordered to be given one opportunity for examining himself as his own witness subject to payment of Rs.10,000/- as costs to the respondent-complainant. Since the complaint is pending for more than three years, the trial Court is directed to expedite disposal of the complaint and to dispose of the same preferably within a period of one month from the date of this order.

04.02.2020

Vinay

(ARUN KUMAR TYAGI)
JUDGE

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