

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

Date of Decision: 27.04.2021

- (1) CRM-M-54664-2019
Kamal Kishore GoyalPetitioner
Versus
Madhu Agarwal and anotherRespondents
- (2) CRM-M-54666-2019
Kamal Kishore GoyalPetitioner
Versus
Madhu Agarwal and anotherRespondents
- (3) CRM-M-54669-2019
Kamal Kishore GoyalPetitioner
Versus
Nikhil Agarwal and anotherRespondents
- (4) CRM-M-54670-2019
Kamal Kishore GoyalPetitioner
Versus
Shilpy Agarwal and anotherRespondents
- (5) CRM-M-54665-2019
Kamal Kishore GoyalPetitioner
Versus
Madhu Agarwal and anotherRespondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mrs. Baljit Mann, Advocate, for the petitioner(s).

Mr. Ajit Singh Lamba, Advocate,
for respondent No.1.

Mr. Ashok Singh Chaudhary, Addl. A. G. Haryana.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through Video Conferencing.

Reply filed on behalf of respondent No.1 is taken on record.

This order shall dispose of the above noted five petitions, as the challenge therein is to the orders passed by the Courts below, whereby the petitioner's application under Section 311 Cr.P.C. to recall the complainant for further cross-examination, was dismissed.

Learned counsel appearing for the petitioner, inter-alia, submits that though the petitioner had given his no objection for recording of the testimony of the complainant in his absence, yet his said concession was with a rider to provide him an opportunity to participate in the proceedings through video conferencing from the Tihar Jail, where he was lodged in FIR No.37 dated 19.01.2018, at the time, when the cross-examination of the complainant had been conducted and completed. Learned counsel further contends that when the petitioner was enlarged on bail on 23.07.2019, he had inspected the file and came to know that the most relevant questions could not be put to the complainant in her cross-examination, by the petitioner's counsel. It was only thereafter that the petitioner had moved the application aforesaid to recall the complainant for cross-examination. However, both the Courts below, have dismissed the said prayer, without appreciating the just expedient cause, put forth by the petitioner.

On the other hand, learned counsel appearing for respondent No.1, opposes the prayer made and contends that a perusal of the cross-examination of the complainant would show that all the relevant questions as regards the issuance of cheques, the amount(s); their presentation for encashment with the Bank, etc., had duly been asked to the complainant by the counsel for the petitioner. While referring to the application under Section 311 Cr.P.C., it is submitted that though the petitioner had averred in the said application that the most important questions could not be asked to the complainant, but as a matter of fact, no such questions had been mentioned in the application. He further contends that the application filed by the petitioner is nothing, but a willful tactic to delay the proceedings and thus, defeat the complainant's lawful right.

I have heard the learned counsel for the parties.

The petitioner's plea that he had not been provided any video conferencing facility within Tihar Jail, in order to participate in the proceedings before the trial Court, seems to have merit. In any case, the only prayer of the petitioner is to recall the complainant for further cross-examination. Statedly, the case is still at the defence evidence and I see no justified ground to not grant the petitioner's prayer, as no prejudice of any kind would be caused to respondent No.1 (complainant).

In view of the above, all the petitions are allowed. The impugned orders 11.12.2019 (Annexure P.4) and 16.10.2019 (Annexure P.3) passed by the Courts below are set aside. The petitioner is permitted to conduct further cross-examination of the complainant, either by appearing in person before the trial

Court or through video conferencing on the next date of hearing or any other date convenient to the trial Court. It is further made clear that no efforts shall be made by the petitioner to linger on the proceedings.

The petitioner shall, however, pay costs of Rs.10,000/- in each case (Rs.50,000/- in total) to the complainant.

27.04.2021
ds

(HARNARESH SINGH GILL)
JUDGE

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