

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-39705-2021 in
CRM-5072-2020 in/and
CRR-417-2020 (O&M)
Reserved on 17.3.2022
Date of Decision: 28.3.2022

Vijay Chopra @ Vijay Kumar Chopra

....Petitioner

VERSUS

Manvir Singh and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sarju Puri, Advocate
for the applicant-petitioner.

Mr. Shrikant Rattan, Advocate,
for the non-applicant/respondent No.1

KARAMJIT SINGH, J.

CRM-39705-2021

Present application has been filed for preponing the date of hearing in the application for stay.

For the reasons mentioned in the application, the same is allowed and the main case itself is taken on board on 17.3.2022.

Main case

The present revision petition has been filed against the order dated 27.1.2020 passed by learned Additional Chief Judicial Magistrate, SBS Nagar whereby an application under Section 311 Cr.P.C. filed by the petitioner/accused permitting the petitioner to further cross-examine the complainant namely Manvir Singh, was declined.

filed a criminal complaint titled Manvir Singh v. Vijay Chopra @ Vijay Kumar Chopra under Section 138 of Negotiable Instruments Act with regard to dishonour of post dated cheque worth Rs. 6 lakhs issued by the petitioner in favour of the said respondent. After completion of the preliminary evidence, the petitioner was summoned to face prosecution under Section 138 of Negotiable Instruments Act and thereafter, he appeared in the trial Court and notice of accusation was served to him to which he did not plead guilty.

Complainant-respondent No.1 himself appeared in the witness box as CW1 and was cross-examined. Thereafter, CW-2/Kulwant Singh was examined in chief by way of an affidavit (Annexure P-3). Thereafter, the petitioner filed an application under Section 311 Cr.P.C. with prayer to permit him to further cross-examine CW1-Manvir Singh on the ground that CW-2-Kulwant Singh was not cited as a witness in the complaint filed by respondent No.1 under Section 138 of Negotiable Instruments Act. However, the said application was dismissed by the trial Court vide impugned order dated 27.1.2020.

Aggrieved by the same, the present petition has been filed by the petitioner.

Counsel for the petitioner contended that CW-2/Kulwant Singh was not cited as a witness in the complaint and as such, the petitioner was taken by surprise when CW-2/Kulwant Singh was produced as a witness by respondent No.1 without the permission of the Court. He further contended that CW-2 in his examination-in-chief deposed regarding certain facts and in these circumstances, it is necessary to further cross-examine the

examination-in-chief of CW-2/Kulwant Singh. He further contended that the Court has got wide power under Section 311 Cr.P.C. to recall CW-1/Manvir Singh for his further cross-examination. In support of his contentions, counsel for the petitioner referred to **Rajaram Prasad Yadav v. State of Bihar and another** (2013) 14 SCC 461.

On the other hand, counsel for respondent No.1 contended that there is no illegality in the impugned order. It is further contended that nothing new has been introduced by CW-2/Kulwant Singh in his examination-in-chief. He further contended that in the given circumstances, no ground is made out to permit the petitioner to further cross-examine CW-1/Manvir Singh. It is further submitted that the learned trial Court rightly declined the application moved by the petitioner under Section 311 Cr.P.C..

I have considered the submissions made by the counsel for the parties.

Complaint lodged by respondent No.1 against the petitioner under Section 138 of Negotiable Instruments Act is Annexure P-1. From the perusal of the same, it appears that CW-2 Kulwant Singh was not cited as a witness in the said complaint. Admittedly, respondent No.1-Manvir Singh was examined as CW1 in the trial Court and in his examination-in-chief, respondent No.1 remained silent about getting any amount from aforesaid Kulwant Singh and thereafter, respondent No.1 tendered aforesaid Kulwant Singh as CW2 and his examination-in-chief by way of affidavit is Annexure P-3. From the perusal of the said examination-in-chief, it appears that he is close friend of respondent No.1-Manvir Singh. CW2 also deposed that the petitioner requested respondent No.1 for friendly loan of ₹ 6 lakhs in the

lakhs from CW-2 Kulwant Singh and it was further clarified that out of the said amount, ₹ 2 lakhs were withdrawn by CW2 from his account in HDFC bank on 16.2.2018 and ₹ 1.5 lakhs were withdrawn by him from Punjab National Bank on the same day and another ₹ 50,000/- were lying with him and as such, CW2 handed over ₹ 4 lakhs to respondent No.1 and thereafter, respondent No.1 gave friendly loan of ₹ 6 lakhs to the petitioner in February 2018 in his presence. All these facts which were disclosed by CW2 in his examination-in-chief were not pleaded by respondent No.1 in complaint (Annexure P-1). In this manner, respondent No.1 gave surprise to the petitioner by examining CW-2/Kulwant Singh.

Section 311 Cr.P.C. confers a wide discretion on the Court to act as the exigencies of justice require to summon a witness or recall or re-examine any person already examined if his evidence appears to it to be essential to the just decision of the case. Further it is the duty of every Court to ensure that a fair and proper opportunities are granted to the accused for just decision of the case.

Now adverting to the facts of the present case, it stands established that certain new facts surfaced in the examination-in-chief of CW-2/Kulwant Singh. In these circumstances, interest of justice demands that opportunity be given to the petitioner to further cross-examine respondent No.1-Manvir Singh with regard to facts which came on record for the first time in the examination-in-chief of CW-2 Kulwant Singh.

In view of above, impugned order dated 27.1.2020 passed by Additional Chief Judicial Magistrate, SBS Nagar is hereby set aside and the application under Section 311 Cr.P.C. preferred by the petitioner is allowed

and he is given permission to further cross-examine respondent No.1 with

regard to new facts which surfaced in examination-in-chief of CW-2/Kulwant Singh.

March 28, 2022
Paritosh Kumar
Whether speaking/reasoned
Whether reportable

(KARAMJIT SINGH)
JUDGE
Yes/No
Yes/No