

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

CRM-M-9270-2021
Date of Decision:-20.04.2022

KUSUM AYAR

... Petitioner

Versus

SATISH KUMAR

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. G.S. Lalli, Advocate for
Mr. S.S. Bhinder, Advocate
for the petitioner.

Mr. R.D. Yadav, Advocate
for the respondent.

KARAMJIT SINGH, J. (Oral)

The present petition has been filed by petitioner/accused under seeking quashing of order dated 10.2.2021 passed by learned Additional Sessions Judge, Gurugram whereby the revision petition filed by the petitioner against the order dated 29.3.2019 passed by Judicial Magistrate Ist Class, Gurugram was dismissed.

The brief facts of the case as stated by the counsel for the petitioner/accused are that respondent/complainant-Satish Kumar filed criminal complaint under Section 138 of the Negotiable Instruments Act (in

short 'NI Act') against the petitioner/accused on the basis of dishonor of cheque. On completion of recording of preliminary evidence, the petitioner was summoned to face trial under Section 138 of NI Act. Notice of accusation was served, to which, she did not plead guilty. During trial, respondent being complainant appeared in the witness box and his cross-examination was conducted by her counsel Mr. Hemant Chauhan, Advocate, who did not cross-examine the respondent/complainant, properly with regard to material aspects of the case. Later on the petitioner came to know that Mr. Hemant Chauhan, Advocate had connived with the opposite party as earlier the said Advocate remained appearing on behalf of the respondent-complainant. That the petitioner also filed complaint regarding professional misconduct committed by Mr. Hemant Chauhan, to the Bar Council of Punjab and Haryana at Chandigarh. As the respondent/complainant was not properly cross-examined, the petitioner moved an application under 311 Cr.P.C. to recall respondent/complainant for his further cross-examination and also to summon wife of the respondent/complainant as a witness.

The said application was contested by respondents No.2 & 3 and after hearing the counsel for the parties the same was dismissed by the trial Court vide impugned order dated 29.3.2019 (Annexure P-5).

Being aggrieved the petitioner filed revision petition, but the same was also dismissed by the Court of Additional Sessions Judge, Gurugram vide order dated 10.2.2021 (Annexure P-4).

The counsel for the petitioner/accused contended that both the impugned orders are unsustainable. The counsel further contended that respondent-complainant was not properly cross-examined by the counsel for

the petitioner, who had already connived with the opposite party. The counsel further contended that even the wife of the respondent/complainant is also to be examined to establish the fact of aforesaid connivance of the counsel for the petitioner. The counsel for the petitioner further contended that the power of the trial Court under Section 311 Cr.P.C. is very vast and can be exercised at any stage of the trial.

On the other hand the counsel for the respondent/complainant submitted that both the impugned orders were passed in accordance with law by the trial Court and revisional Court respectively. The counsel further contended that proper and effective opportunity was availed by the petitioner to cross-examine the respondent/complainant. The counsel further contended that wife of the respondent/complainant is having no concern with the present case and as such no ground is made out to summon her as a witness in the present case.

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

Respondent/complainant filed criminal complaint titled Satish Kumar vs. Ms. Kusum Ayar under Section 138 NI Act with regard to dishonour of cheques issued by by the petitioner in his favour. During trial respondent/complainant was cross-examined. The plea of the petitioner is that respondent/complainant was not effectively cross-examined by her counsel as the said counsel connived with the opposite party. Undoubtedly the trial Court has power under Section 311 Cr.P.C. to recall any witness at any stage of the case if Court considers it necessary for a just decision. It is also settled proposition that the party cannot be allowed to suffer due to the

negligence or omission on the part of his/her counsel. Thus this Court is of the view that the trial Court should have given one opportunity to the petitioner to further cross-examine respondent/complainant, by recalling him. However, the counsel for the petitioner has failed to establish as to how the testimony of the wife of the respondent/complainant is relevant and is necessary for the just decision of the case.

In the light of the above, the present petition is partly allowed and both the impugned orders are hereby set aside to the extent whereby the request made by the petitioner to recall respondent/complainant for his further cross-examination was declined and the trial Court is hereby directed to recall the respondent/complainant for his further cross-examination by the petitioner/accused, subject to deposit of cost of ₹5,000/- by the petitioner/accused with the District Legal Services Authorities, Gurugram.

(KARAMJIT SINGH)
JUDGE

20.04.2022
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No