

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

116

CRM-M-9123-2020

Date of Decision : **April 04, 2022**

Virender Mohan Kaushal and another

.....Petitioners

VERSUS

Ashok Kumar Bhatia

.....Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present : Ms. Ishita Jain, Advocate for
Mr. Namit Khurana, Advocate
for the petitioners.

JASGURPREET SINGH PURI. J.

The present petition has been filed under Section 482 of Cr.P.C. for seeking quashing of the order dated 17.2.2020 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Yamuna Nagar whereby application under Section 311 Cr.P.C. for recalling of the complainant for his cross-examination has been dismissed.

The learned counsel for the petitioners has submitted that the petitioner, who is the accused in the complaint under Section 138 of the Negotiable Instruments Act had filed an application under Section 311 Cr.P.C. for recalling of the complainant for conducting his cross-examination but the same has been dismissed by the learned Judicial Magistrate 1st Class, Yamuna Nagar and, therefore, the impugned order is liable to be set-aside. He submitted that the complaint in the present case pertains to a cheque and infact there is another cheque regarding which another complaint is also pending bearing case No. 241 of 2016 and the

petitioner-accused wishes to recall the complainant to test the veracity of his version taken in the aforesaid another complaint as there was no mentioning of the cheque in the present case.

I have heard the learned counsel for the petitioner.

The application was filed under Section 311 Cr.P.C. for recalling of the complainant for his cross-examination. As per the impugned order whereby the application was dismissed by the learned Judicial Magistrate 1st Class, Yamuna Nagar it has been observed that the present application has been filed seeking cross-examination of the complainant to be conducted by the accused with regard to their defence plea which would have been taken by him in another complaint of another cheque. The petitioner/defence does not desire to conduct the cross-examination of the complainant pertaining to the facts of the present case and, therefore, such a course of action was not permissible under the law. The learned Judicial Magistrate 1st Class, Yamuna Nagar further observed that the petitioner-accused cannot be allowed to gather evidence pertaining to subsequent complaint which was filed against him pertaining to dishonour of another cheque under the guise of the present application.

The complaint in the present case pertains to the year 2015 and the matter has now been fixed for arguments, 6 years have already elapsed. It has come in the impugned order passed by the learned Judicial Magistrate 1st Class, Yamuna Nagar that the complainant was cross-examined by the previous counsel on 9.8.2019 and the plea of the petitioner is that he could not be examined on one aspect which is also

not permissible under the law. The petitioner-accused wishes to cross-examine the complainant once again with regard to some other cheque in which another complaint is pending. Once an opportunity has been given to the petitioner for cross-examination and the complainant has been cross-examined and it appears that there has been a change of counsel by the petitioner-accused, the same cannot become a ground for further recalling of the complainant for his further cross-examination. Such a recalling can always be made when in the facts and circumstances of the subject matter goes to the roots of the controversy involved but in the present case, the petitioner-accused wishes to cross-examine the complainant once again pertaining to some other cheque in some other complaint which is not permissible. Even otherwise also the complaint is 6 years old and fixed for arguments and, therefore, the trial cannot be further delayed on the basis of the grounds taken by the learned counsel for the petitioner.

Therefore, finding no merit in the present petition, the same is, hereby, dismissed.

April 04, 2022
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(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No