

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

**CRM-M-12775 of 2021
Date of Decision:- 26.05.2022**

M/s Gian Chand and Sons (P) Ltd. and another

....Petitioners

Vs.

M/s Mahavir Traders

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- None for the petitioners.

Mr. H.S. Oberoi, Advocate
for the respondent.

KARAMJIT SINGH, J.

Petitioners have filed the present petition for setting aside order dated 04.02.2020(P-6) passed by the Court of Judicial Magistrate 1st Class, Ludhiana, in Criminal Complaint No.6117 of 2018 dated 03.05.2018 titled as “M/s Mahavir Traders Vs. M/s Gian Chand” filed under Section 138 of Negotiable Instruments Act, whereby cross-examination of the complainant was treated as Nil by the Trial Court.

Today none has appeared on behalf of the petitioners. The counsel for the respondent made prayer that the present petition should be disposed of either way, as the stay is operating in favour of the petitioners, as a result of which delay is being caused in disposal

of aforesaid criminal complaint filed by the respondent under Section 138 of Negotiable Instruments Act, which is presently pending before the Court of JMIC, Ludhiana.

I have heard the counsel for the respondent and has gone through the impugned order, Annexure P-6.

From the perusal of the impugned order it appears that CW1 Gulshan Kumar Jain repeatedly appeared in the trial Court for his cross-examination but the opposite counsel kept on delaying his cross-examination on the one pretext or the other and finally the trial Court passed impugned order, whereby the cross-examination of CW1 Gulshan Kumar Jain, was ordered to be treated as Nil.

The counsel for the respondent contended that there is no illegality in the impugned order and the present petition be dismissed.

It is settled law that the party cannot be penalized for the negligence or in-action of his counsel. Otherwise also the Court has an ample power under Section 311 Cr.P.C at any stage of the trial to recall any witness for his cross-examination. The object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake committed by either party.

In the light of the above, the present petition is allowed and the impugned order is hereby set aside and direction is given to the learned Trial Court to recall CW1 Gulshan Kumar Jain and to provide one effective opportunity to the petitioners to cross-examine

him, subject to costs of Rs.5000/- which is to be deposited by the petitioners with the District Legal Services Authority Ludhiana.

It is made clear that in case the petitioners fail to cross-examine CW1 Gulshan Kumar Jain, on the given date to be fixed by the trial Court, no further opportunity shall be granted and their right to cross-examine the witness shall be deemed to have been closed.

Copy of this order be sent immediately to the trial Court through electronic mode also, for compliance.

Disposed of accordingly, so also the pending miscellaneous application(s), if any.

26.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No