

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

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CRM-M-39059-2017 (O&M)

Date of Decision: 15.03.2022

ASHOK KUMAR

... Petitioner

Versus

AMAR NATH

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sandeep Arora, Advocate
 for the petitioner.

 Mr. Hitesh Ghai, Advocate
 for the respondent.

HARNARESH SINGH GILL, J.(Oral)

Challenge in the present petition to the orders passed by the Courts below, whereby an application under Section 311 Cr.P.C. filed by the petitioner-accused, for recalling the respondent/complainant for further cross-examination, has been dismissed.

Learned counsel for the petitioner submits that the petitioner is facing trial under Section 138 of the Negotiable Instruments Act, 1881; that the complainant was examined before the trial Court, but certain vital questions were left out and could not be asked; that the said questions are just and proper for the rational decision of the case and that the petitioner

had moved an application for the said purpose but the Courts below dismissed the said application holding that the cross-examination of the complainant remained pending for a long time and despite having availed many opportunities, the petitioner did not bother to ask the questions, now sought to be asked. Learned counsel for the petitioner further states that only one opportunity is required to be given to the petitioner to further cross-examine the complainant and the said process will only enable the just adjudication of the lis between the parties.

In support of his contentions, he relies upon the judgment passed by Hon'ble Supreme Court in Foodworld Super Markets Ltd. and another vs. H. Sujan Singh and others, 2009 (14) SCC 359 and Mannan SK and others vs State of West Bengal and another, 2014 (13) SCC 59.

Per contra, while opposing the prayer in the petition, learned counsel for the respondent submits that on 15.07.2014, 03.12.2014, 08.04.2015 and 08.02.2016, cross-examination of the complainant was conducted and that the petitioner had already availed 4 opportunities for the said purpose. He further submits that for a period of almost 4 years, cross-examination of the complainant was conducted and thus, there is no justification in granting any further opportunity to the petitioner. It is further submitted that the complaint was filed in the year 2010 and it is because of the delay tactics adopted by the petitioner that the trial is lingering on and that moving of the application under Section 311 Cr.P.C. is only an attempt

to further delay the decision of the complaint.

I have heard the learned counsel for the parties.

There is no dispute that the petitioner ought to have been vigilant while conducting the cross-examination of the complainant. The petitioner had also availed various opportunities for the said purpose. However, the fact remains that the petitioner is only praying for one more opportunity to ask certain relevant questions to the complainant. This Court is, thus, of the view that grant of one more opportunity subject to payment of costs would only serve the ends of justice so that the case could be decided on the basis of evidence led.

In view of the above, the present revision petition is allowed and the orders dated 05.09.2017 (Annexure P-5) passed by the learned Additional Sessions Judge, Ludhiana and order dated 17.05.2017 (Annexure P-3) passed by the learned Judicial Magistrate, 1st Class, Ludhiana, are hereby set aside. The petitioner is granted one opportunity to cross-examine the complainant, subject to him paying costs of Rs.2,000/- to the complainant. The learned trial Court is directed to issue summons to the complainant for his cross-examination.

However, it is made clear that if the petitioner fails to cross-examine the complainant on the date so fixed by the trial Court, no further opportunity shall be granted to him.

At this stage, learned counsel for the petitioner submits that the amount of Rs.3,30,000/-, in the shape of two demand drafts in the name of the respondent, lying deposited with the Registrar (Judicial) of this Court, be ordered to be returned to him.

In view of the above, Registrar (Judicial) of this Court is directed to return the demand drafts to the petitioner against proper receipt and identification.

15.03.2022

Aman Jain

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned

: *Yes/No*

Whether reportable

: *Yes/No*