

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

**CRM-M-30208-2022(O&M)
Date of decision: 15.07.2022**

Sanjeev Kumar @ Bindu

...Petitioner

Versus

Tarun Mittal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Sumeet Jain, Advocate for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Challenge is to order dated 17.05.2022 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Malerkotla, vide which an application dated 17.05.2022 (Annexure P-2) moved by the petitioner to cross-examine the respondent, was dismissed.

Learned counsel for the petitioner submits that on 02.05.2012, the petitioner borrowed a sum of Rs. 1 lakh from his close friend Sanjeev Kumar @ Shanta, in the presence of Sandeep Singh and as a security thereof, the petitioner had handed over a blank cheque bearing No. 018868 to said Sanjeev Kumar @ Shanta; that later on, the entire loan amount was repaid by the petitioner on 28.05.2012, but the aforesaid cheque was not returned by Sanjeev Kumar @ Shanta to the petitioner; that the respondent-complainant in connivance with Sanjeev Kumar @ Shanta, had filed a false and fabricated complaint under Section 138 of the Negotiable Instruments Act, 1881, against the petitioner by fabricating the said cheque alleging therein that the petitioner had borrowed an amount of Rs. 6 lakh from him and that the petitioner had issued the said cheque in discharge of his legal liability.

He further submits that the petitioner cross-examined the respondent on 14.05.2019 and closed his evidence; that thereafter, an application for recalling the respondent for cross-examination was dismissed by the learned trial Court on 23.07.2019; that the said order was challenged in this Court, wherein vide order dated 20.08.2019 passed by a Coordinate Bench, one opportunity was granted to the petitioner to cross-examine the respondent subject to payment of costs of Rs.10,000/- and that as the case was being adjourned from time to time, the petitioner moved an application on 17.05.2022 to cross-examine the respondent, but the same was dismissed by the learned trial Court, by way of the order impugned herein.

I have heard the learned counsel for the petitioner and have also gone through the impugned order.

It may be noticed that vide order dated 20.08.2019 passed by the Coordinate Bench, only one opportunity was granted to the petitioner to cross-examine the respondent-complainant. The trial Court in the impugned order has clearly noticed that on 10.09.2019, both, the complainant-respondent and accused, were present in the Court, but the defence counsel instead of cross-examining the complainant-respondent, moved an application for an adjournment for 1 ½ to 2 months, which was dismissed on 01.10.2019. The relevant part of the order dated 01.10.2019 would read as under:-

“After hearing the learned counsel for the parties and perusing the file, it is evident that vide order dated 23.07.2019, the application under Section 311 Cr.P.C. filed by the accused was dismissed. Thereafter, accused filed a revision petition against said order which was disposed of on 20.08.2019 by the Hon’ble High Court with the direction that the trial Court shall afford

only one opportunity to cross-examine the complainant subject to payment of Rs.10,000/- as costs to be deposited to the Haryana State Legal Service Authority. It has further been ordered that petitioner shall not make any effort to delay the trial. Thereafter, the accused has filed the present application for seeking adjournment on the ground that he wants to put certain cases to the complainant in his cross-examination and he needs some time to get certified copies of those cases. But this Court is of the view that the accused has filed the present application just to delay the matter. Moreover, there is no order from the Hon'ble High Court regarding giving long adjournment to the accused for cross-examination of complainant. As per the order dated 20.08.2019 passed by the Hon'ble High Court, only one opportunity is granted to accused to cross-examine the complainant subject to payment of Rs.10,000/- as costs. As such, no ground is made out to allow the present application. Accordingly, present application is dismissed. Accused is directed to cross-examine the complainant on 18.10.2019 subject to last opportunity as per orders of Hon'ble High Court."

A perusal of the aforesaid extracts would show that the trial Court had granted last opportunity to the petitioner to cross-examine the respondent-complainant, and adjourned the case to 18.10.2019, but still the needful was not done. A perusal of the impugned order would further show that the case was adjourned for a number of dates i.e. 06.04.2021; 27.08.2021, 15.09.2021, 08.10.2021 and 02.12.2021, but still, the cross-examination was not done. The ground of Covid-19 pleaded by the petitioner before the trial Court, has been negated by the trial Court, for the reason that even during Covid-19 period, the Courts remained open in a phased manner, but still no effort was made on the part of the petitioner to cross-examine the respondent-complainant.

Having availed of numerous opportunities as against the one

granted by the Coordinate Bench, there survives no ground to the petitioner to seek for any further indulgence. It clearly seems that the application moved by the petitioner is motivated to linger on the proceedings.

In view of the above, finding no merit in the present petition, the same is hereby dismissed.

15.07.2022

Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

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