

(125)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-38998-2022
Date of Decision: 31.08.2022

Norang Lal

... Petitioner

Versus

Paramjit Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Vivek Baghla, Advocate for the petitioner.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the impugned order dated 05.08.2022 (Annexure P-3) passed by the learned Sessions Judge, Fazilka in CRR No.80 of 03.08.2022 titled as Norang Lal Versus Paramjit Singh, whereby the revision petition filed by the petitioner has been dismissed vide order dated 30.05.2022 (Annexure P-1) passed by the learned Judicial Magistrate, 1st Class, Fazilka in case NACT-357-2019/11.06.2019 titled as Paramjit Singh Versus Norang Lal.

2. The brief facts of the case are that a complaint under Section 138 of the Negotiable Instruments Act was filed by the complainant-respondent in the Trial Court with the allegations that the petitioner had issued a cheque No.378263 dated 20.05.2019 for an amount of Rs.3,32,000/- from his bank account No.32278213992 drawn on State Bank of India Branch Fazilka to

discharge his liability. The said cheque came to be dishonoured and after completing the formalities under the Act, the complaint was filed leading to the summoning of the accused/petitioner.

3. The trial began against the petitioner. The complainant was examined as CW-1 and his after notice evidence was closed on 18.02.2021. His statement under Section 313 Cr.P.C. and defence evidence was to be recorded on 30.05.2022. At that stage an application under Section 311 Cr.P.C. was moved on his behalf for recalling the complainant for conducting his further cross-examination. After seeking a reply from the complainant-respondent, the said application was dismissed by the Trial Court vide order dated 30.05.2022 observing that there was no averment as to what important facts had come to the knowledge of the counsel of the accused and what was the reason for which the witness was required to be recalled. Mere change of counsel was not sufficient in order to allow an application under Section 311 Cr.P.C.

4. Aggrieved by the said order, a revision petition was preferred by the petitioner/accused before the Court of Sessions Judge, Fazilka. The same contentions were raised before that Court. After hearing both the parties, the Court came to the conclusion that there was nothing set out by the petitioner/accused with respect to the important facts which he sought to be put to the complainant in further cross-examination. A number of documents had been annexed with the revision petition none of which could establish that the application under Section 311 Cr.P.C. ought to be allowed in the interest of justice.

It is this order of the learned Sessions Judge, Fazilka dated 05.08.2022 (Annexure P-3) which is under challenge before this Court.

5. The learned counsel for the petitioner has reiterated the contents of his application (Annexure P-2). He submits that there was certain important facts which were not to the knowledge of the earlier counsel for the accused/petitioner. It was only upon the change of counsel when the inspection of the case was done thoroughly that realization dawned that certain important questions were not put to the cross-examination to the complainant because of which an application under Section 311 Cr.P.C. had been moved. He referred to a complaint titled as Paramjit Singh Versus Rishu Watts which had been dismissed by the learned Chief Judicial Magistrate, Fazilka vide order dated 24.11.2011, wherein it is stated that the complainant had said that he was not a money lender. In fact, he was running a finance company by the name and style of M/s Sacha Sauda Enterprises, Opposite Truck Union, Fazilka. He therefore, contends that the complainant ought to be recalled for further cross-examination in order to put all these documents to him for the just adjudication of the present case.

6. I have heard the learned counsel for the petitioner.

7. Before proceeding further, it would be apposite to examine Section 311 Cr.P.C., reads as under:

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his

evidence appears to it to be essential to the just decision of the case.”

8. A perusal of Section 311 Cr.P.C. would reveal that the Court can certainly exercise its powers under Section 311 Cr.P.C. if the facts so warrant.

9. In the present case firstly, change of counsel is no ground to allow an application under Section 311 Cr.P.C. This Court in the case of **Rajinder Trehan Versus M/s HDFC Bank Ltd. passed in CRM-M-34596-2022, decided on 17.08.2022,** has held so:-

“Be that as it may, in the present application the recall, re-cross examination of the complainant is sought by the petitioner-accused on account of change of counsel. Firstly, the change of counsel is no ground for recall of witness. The Hon'ble Supreme Court in AG Vs. Shiv Kumar Yadav & Anr. 2015(9) Scake 649: 2015 Cri.L.R. (SC) 1007 has held so.”

10. Secondly, even today, during the course of arguments, the counsel for the petitioner has not been able to explain as to what specific documents/questions are required to be put to the complainant, if he was to be recalled pursuant to an application under Section 311 Cr.P.C. In fact, a perusal of the application (Annexure P-2) would show that the fact of the dismissal of an earlier complainant of the complainant was sought to be put to the complainant. By no stretch of imagination can it be stated that the said fact has any relevance to the present complaint. Assuming that there was an earlier complaint at the instance of the complainant under Section 138 of the Negotiable Instruments Act which had been dismissed, that in itself would have very little relevance to the facts and circumstances of the present case. In the present case, the trial is to be conducted on the basis of the evidence led in

this case alone. Therefore, it appears that the present application has been moved only with a purpose to delay proceedings.

11. In view of the above, I find no merit in the present petition and the same is hereby dismissed.

(JASJIT SINGH BEDI)
JUDGE

31.08.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No