

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

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CRM-M-53944-2022

Date of decision: 16.12.2022

SOHAN SINGH ALIAS SOHAN LAL SINGH

...Petitioner

VERSUS

M/S PKF FINANCE LTD

...Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. H.S. Saini, Advocate
for the petitioner.

DEEPAK MANCHANDA, J.(ORAL)

The present petition has been filed praying for quashing of impugned order dated 06.10.2022 passed by the learned trial Court/Judicial Magistrate Ist Class-3, Jalandhar in case bearing NACT No.5224 of 2018 dated 18.09.2018 whereby the opportunity of the petitioner to cross-examine the sole complainant witness had been closed by the trial Court.

The brief facts of the case are that respondent has filed complaint under Section 138 of the Negotiable Instruments Act against the petitioner and petitioner was willing to cross-examine the sole witness of the complainant-company but without affording reasonable opportunity to the petitioner vide impugned order dated 06.10.2022 the trial Court closed/made nil cross-examination of the petitioner.

Learned counsel for the petitioner prays for granting one opportunity to cross-examine the complainant witness-CW-1/Kartar Singh, on the ground that the counsel for the petitioner could not appear on the

date fixed i.e. 06.10.2022 to cross-examine CW-1 Kartar Singh in the morning session and when petitioner approached the counsel, he advised to seek an adjournment by moving an application and petitioner without knowing the implication of law on the advise of his counsel submitted an application before the trial Court seeking adjournment of the case. However, vide impugned order dated 06.10.2022, the said application was not accepted and the opportunity of the petitioner to cross-examine CW 1-Kartar Singh was closed and deferred the matter to 17.10.2022 for recording the statement of the petitioner under Section 313 Cr.P.C. Learned counsel submits that aggrieved by conduct of the counsel, a complaint dated 11.10.2022 was also submitted with the District Bar Association for return of the brief from the said counsel, who did not represent the petitioner in the case properly. Apart from the same, petitioner sent a complainant to the Bar Council of Punjab and Haryana High Court, Chandigarh also.

Learned counsel further submits that petitioner engaged a new counsel who put in appearance before the trial Court and the matter was adjourned to 27.10.2022, thereafter, an application dated 27.10.2022 seeking recalling of the order dated 06.10.2022 before the trial Court with an opportunity to cross-examine CW 1-Kartar Singh was filed but even said application was also returned being not maintainable and now the matter is listed on 19.12.2022 for recording statement under Section 313 Cr.P.C. and prays for granting one opportunity to cross-examine.

Mr. Rohit Sud, Advocate has put in appearance on behalf of respondent and filed his Vakalatnama, the same is taken on record.

From the facts and circumstances of the case, it is clear that due to absence of the counsel appearing before the trial Court the sole

complainant witness could not be examined whereas it was the duty of the counsel that the witness should be cross-examined and the petitioner should not suffer. The petitioner is not aware of the law what is the effect of non-cross-examination of the complainant witness and it is the settled law that the accused should not suffer for fault of the counsel, admittedly, the petitioner has been deprived of the valuable right of cross-examination for fault of the counsel. The trial Court declined the application without any justification and recorded "cross-examination made NIL". The Court has power under Section 311 of the Code to recall the witness for cross-examination at any time and there is no bar in the provisions, however, this power is to be exercised judiciously. In the present case, the only CW is to be examined and the application was also made by the subsequent counsel of the petitioner. No prejudice will be caused to the complainant-respondent if cross-examination of CW 1-Kartar Singh is allowed rather prejudice will be caused to the petitioner-accused if cross-examination of CW-1 is not allowed and this Court is of the view that justice should not be denied on hyper-technical grounds.

Keeping in view the fact that the valuable right of cross-examination, which vests with the accused has not been given to the petitioner which will certainly prejudice the case of the petitioner. Hence, the cross-examination of witness is essential for the justification of the case and the grounds mentioned in the petition are sufficient to allow one effective cross-examination of CW 1-Kartar Singh, which is required to be afforded to the petitioner.

In view of the discussion above, one effective opportunity is granted to cross-examine CW 1-Kartar Singh subject to payment of

Rs.10,000/- as cost which shall be deposited with the Legal Services Authorities, Jalandhar and it is made clear that no further opportunity shall be granted for the said purpose.

Petition is disposed of.

December 16, 2022
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(DEEPAK MANCHANDA)
JUDGE

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