

114

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

CRM-M-2467-2023 (O&M)

Date of decision: 05.09.2023

Arvind Manchanda

...Petitioner

VS

Ashwani Chadha and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Arun Gupta, Advocate for
Mr. Rakesh Gupta, Advocate,
For the petitioner.

Ms. Svaneel Jaswal, Additional A.G., Haryana
For respondent No.2.

ARUN MONGA, J. (ORAL)

Petition herein, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is for quashing/setting aside of impugned order dated 05.11.2022 (Annexure P-11) passed by learned Additional Sessions Judge, Ambala in criminal revision filed by the petitioner challenging order dated 12.05.2022 (Annexure P-9) passed by learned Judicial Magistrate 1st Class, Ambala in complaint under Section 138 of Negotiable Instruments Act, 1881 read with Sections 406, 420 of IPC thereby dismissing the application (Annexure P-8) under Section 311 read with Section 91 Cr.P.C. filed by the petitioner for directing the complainant to produce his ITRs and computation sheet for the period from 2014-2019 and for his further cross-examination by the petitioner, was dismissed.

2. Briefly stated, facts as noticed by learned Court below are as under:

“2. The brief facts as stated in the application are that the complainant has filed a false and frivolous complaint against the accused on the basis of false and fabricated documents. The complainant has misused the blank documents and blank security cheque of the accused and accused has no legal liability towards the amount of cheques in question. It is further submitted that on 17.03.2021, Ms. Anita Rani, the then learned JMFC had granted Nil opportunity for cross-examination of the complainant. Feeling aggrieved to that order, the applicant-accused preferred a revision petition which was accepted by the Court of Sh. Rohit Watts, learned Addl. Sessions Judge, Ambala and vide order dated 14.10.2021 one opportunity was granted to the applicant-accused to cross-examine the complainant. On 22.11.2021, the applicant-accused engaged the counsel, who cross-examined the complainant partly but the cross-examination of complainant was deferred on that day as the court time was over. On 24.11.2021, the counsel for the applicant-accused cross-examined the complainant, however, at that time, some material questions were left to be put to the complainant regarding the fact that whether the complainant had received any interest or principle from the accused at any point of time and some questions regarding document Ex.C3 and some vital question on the issue of legal liability of accused and whether the complainant had amount at the time of giving alleged loan according to his ITRS filed by him during the relevant period of alleged loan. The applicant-accused also wants to cross-examine the complainant on the fact that how many complaints have been filed by the complainant against other persons on the same modus operandi by mentioning the same story and the said questions were inadvertently left to be asked from the complainant. It is further submitted that at the time of cross-examination of the complainant, the applicant-accused had specifically put a question to the complainant that whether the complainant can produce his ITRs, on which the complainant replied that if the Hon'ble Court asks, he can produce the same and it is very much necessary to direct the complainant to produce his ITRs and computation sheets for the period during which alleged loan was granted to the accused. It is submitted that the Hon'ble Court had granted only one opportunity to the accused to cross-examine the complainant. However, the applicant-accused could not brief his counsel for cross-examination of the complainant and due to the said reason, the material questions are left to be put to the complainant. It is further submitted that the further cross-examination of the complainant is very much essential for the applicant-accused and as per the provisions of Section 311 of Cr.P.C. a witness can be summoned for examination or re-examination at any stage of the case, if the examination of that witness is essential for the just decision of the case. Lastly prayed for allowing, the application and for directing the complainant to produce his ITRS and computation sheet for the year 2014- 2019.”

3. Learned counsel appearing on behalf of petitioner submits that while passing the impugned orders dated 12.05.2022 (Annexure P-9) and 05.11.2022 (Annexure P-11), learned Courts below wrongly observed that all the questions have been asked by petitioner to the complainant and that petitioner had sufficient time to prepare the questions which were to be put to complainant during cross-examination. Learned counsel further contends that at the time of cross-examination, petitioner specifically put a question to complainant that as to whether he can produce his ITR, the complainant had replied that if the Hon'ble Court will direct, he will produce the same. Therefore, it becomes imperative for the Court to direct respondent No.1/ complainant to produce the required documents for proper adjudication of the case, thereby allowing the application filed by petitioner under Section 311 read with Section 91 Cr.P.C.

4. Heard.

5. Order dated 05.11.2022 (Annexure P-11), assailed herein, passed by learned Additional Sessions Judge, Ambala, is premised, *inter alia*, on the following reasoning:

“After hearing rival contentions raised by learned counsel for the parties, this court is of the considered view that there is no force in contentions raised by learned counsel for the revisionist-accused. Perusal of the file shows that examination in-chief of complainant Ashwani was recorded on 27.02.2020 and case was adjourned for his cross-examination time and again by giving sufficient effective time/opportunities to the accused-revisionist to cross-examine the complainant till 17.03.2021. Thereafter, vide an order dated 14.10.2021 under the revision of application under Section 311 of the Cr.P.C. passed by the court of Shri Rohit Vats, the learned Additional Sessions Judge, Ambala, accused was granted one more effective opportunity to cross-examine the complainant. Therefore, vide an order dated 24.11.2021 cross-examination of complainant was recorded. Meaning thereby, the accused-revisionist availed sufficient opportunities to cross examine the complainant. Thereafter, the accused-revisionist again moved

the application under Section 311 of the Cr.P.C. for further cross-examine of the complainant. However, perusal of the file shows that the accused-revisionist has already cross-examined the complainant at length and asked almost all of the question related to the matter. Further, if any question remains left to be asked to the complainant by the accused during cross-examination, it was own fault on the part of the revisionist as he was supposed to prepare his case well within time for all intents & purposes including for cross-examination of the complainant, but the accused failed to do so despite availing sufficient opportunities & time from 27.02.2020 i.e. the date of recording of examination in chief of complainant till 24.11.2021 i.e. the date of completion of cross-examination of the complainant after availing one more opportunity as per order dated 14.10.2021 passed by the court of Shri Rohit Vats, learned Additional Sessions Judge, Ambala. It is pertinent to mention here that the vide the order dated 14.13.2021 aforesaid one more opportunity was granted by the court of Shri Rohit Vats, learned Additional Sessions Judge, Ambala in revision petition for cross-examination of complainant and now this revision has also been filed by the revisionist for further cross-examination of the complainant which can not be allowed time and again. In so far as summoning/submission of documents regarding ITRS of the complainant is concerned, the revisionist can summon the same in his defence as per law. As such, there is no reasonable cause before this court to allow the accused-revisions again and again to cross-examine the complainant and it will only to delay the case further which pertains to the year 2018 and the case is still pending for recording statement of accused under Section 313 of the Cr.P.C. Thus, the impugned order passed by the learned trial court is legal, valid and does not require any interference of any kind.”

6. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law.

7. Contentions in the petition herein have been duly considered and rejected by Learned Courts below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above.

I am inclined to agree with the view thereon taken by learned Court below.

8. Trite law it is that no person in any criminal proceedings can be compelled to produce anything incriminating against him/her merely because the complainant in his cross-examination mentioned that ITR reports can be produced if the Hon'ble Court will direct. The petitioner-

accused failed at that time to request the Court for a direction to the complainant to produce his ITRs. Having then missed the bus it is too late in the day now to take a U turn. In any case, he cannot be allowed as a matter of right to insist on its production. Defence has to stand on its own legs. The complainant cannot be compelled to adduce anything which he does not wish to rely on in his own evidence.

- 9. There is thus no room for interference in the aforesaid valid reasons recorded by learned trial Court, with which I am in agreement.
- 10. No grounds are made out to interfere.
- 11. Dismissed.
- 12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

05.09.2023
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No