

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

Sr. No.117

CRM-M-4914-2023 (O&M)

Date of Decision : January 31, 2023

Prithvi Singh

...Petitioner

Versus

Manoj Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Aakash Singla, Advocate, for the petitioner.

SUDHIR MITTAL, J. (ORAL)

CRM-4633-2023

Allowed as prayed for.

Exemption sought is granted.

CRM-M-4914-2023 (O&M)

The petitioner is an accused in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881. After examination of the complainant, he cross-examined him at length and the same was closed on 03.01.2019. Section 313 Cr.P.C. statement has been recorded but defence evidence has not been concluded. On 10.06.2022, an application was filed on behalf of the petitioner under Section 311 Cr.P.C. for recalling the complainant. This application has been dismissed by the trial Court and revision preferred against the same has been dismissed by the Sessions Court. Thus, the present petition has been filed for quashing of the impugned orders.

Learned counsel for the petitioner has submitted that certain documents came into existence later i.e. after the conclusion of the cross-examination of the complainant. Thus, the complainant could not have been cross-examined on the basis thereof. Change of counsel as recorded by the trial Court was not the reason for filing the application. Section 311 Cr.P.C. makes it incumbent upon the Court to recall a witness for cross-examination if the recall is essential for a just decision of the case. The Courts below have failed to take this legal aspect into consideration. Reliance has been placed upon ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal) 726***. It has also been argued that delivery has not been proved as there is no evidence on record regarding the wood having been received by the petitioner.

A perusal of the application shows that the petitioner wants to cross-examine the complainant on the basis of Civil Suit No.469-CS dated 06.08.2020 as well as a cancellation report confirmed by DSP Headquarter, Fatehabad on 01.04.2019. Both these documents have come into existence after cross examination was closed on 03.01.2019. However, it is not necessary to recall the complainant for cross-examination as the said documents can be produced by the accused in his defence evidence which admittedly has not been closed. The provision of Section 311 Cr.P.C. making it incumbent upon the Court to recall a witness if a just decision of the case so demands, is not attracted in this case as recalling the witness is not essential. The evidence that the petitioner wants to place on record can be produced during the defence evidence. Hence, reliance upon ***Rajaram Prasad Yadav (supra)*** is misplaced.

The argument regarding delivery of wood having not been proved is totally misconceived. For the said purpose, the entire evidence will have to be examined by the Court concerned after arguments are heard. At the stage of decision of an application under Section 311 Cr.P.C., the same is not relevant.

The present petition has not merit and is dismissed.

Pending miscellaneous application, if any, also stands dismissed.

January 31, 2023

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No