

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

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CRM-M-9509-2023

Date of Decision: 22.02.2023

Sandip Rathi

.....Petitioner

Vs.

Rajender Kumar

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Yashvir S. Balhara, Advocate for the petitioner.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash order dated 12.10.2022 (Annexure P-1) passed by the Learned Sessions Judge, Faridabad in Criminal Appeal No.920/2018 whereby an application under Section 391 Cr.P.C. was dismissed.

2. It is revealed that in criminal complaint case No.1083/2016 titled as 'Rajender Kumar Versus Sandip Rathi', the accused Sandip Rathi (now petitioner) was convicted by the Trial Court vide judgment dated 28.08.2018 (Annexure P-2) under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for the period of 6 months and to pay compensation amount of ₹2,25,000/- to the complainant. During the appeal filed against the aforesaid judgment of conviction and order of sentence, petitioner moved an application under Section 391 Cr.P.C. read with Section 311 Cr.P.C. for recalling the complainant for cross-examination and for production of the account statements of M/s Sunrise Business System being operated by the accused – petitioner. The said application has been dismissed by Learned Sessions Judge, Faridabad by way of impugned order.

3. It is contended that impugned order has been passed in haste, without providing opportunity to the petitioner so as to cross-examine the complainant, which has led to unfair trial. Not providing opportunity to cross-examine the complainant would cause grave prejudice to the accused as he will not be able to prove his innocence.

4. Perusal of the impugned order reveals that Trial Court vide order dated 12.07.2017 had allowed the accused-petitioner to cross-examine the complainant, for which purpose matter was fixed for 21.08.2017 and then the same was adjourned to 01.09.2017, 04.10.2017 and 24.10.2017. Thus, despite availing ample opportunities petitioner-accused failed to cross-examine the complainant. The application under Section 391 Cr.P.C. before the Appellate Court has been moved much later on 16.03.2020 as is evident from the date mentioned on the application.

5. From the circumstances it is evident that the only motive of the petitioner to move the application was to delay the proceedings. Having availed sufficient opportunities before the Trial Court to cross-examine the complainant, it does not lie in the mouth of the petitioner-accused to contend that will be prejudiced if application is not allowed.

6. Finding no illegality or material irregularity in the impugned order, the present petition is hereby dismissed.

February 22, 2023

Neetika Tuteja

(DEEPAK GUPTA)

JUDGE

Whether Speaking/reasoned

Yes/No

Whether Reportable

Yes/No