

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CRM-M-20001-2023
Date of Decision:24.04.2023

Kamal Ram @ Kamal
Vs.

.....Petitioner

Lalit Gupta

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Vipul Sachdeva, Advocate
for the petitioner.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C. is to quash order dated 30.01.2023 (Annexure P-7) passed by learned Judicial Magistrate 1st Class, Chandigarh whereby an application under Section 311 Cr.P.C. moved by the petitioner-accused to recall respondent-complainant in a criminal complaint bearing No.NACT No.16075 of 2019 titled as 'Lalit Gupta Vs. Kamal' was dismissed.

2. According to the petitioner, certain bills regarding material of construction and labour charges etc. were raised from the account of the company of the petitioner and that entire amount was transferred on behalf of the respondent which was well within his knowledge.

3. It is submitted that when the respondent-complainant was called for his cross-examination on 26.05.2022, important suggestions regarding those documents, handed over by the petitioner to the respondent, could not be given. Those essential suggestions ought to have been put to the respondent. He also disclosed the factual position

in his statement under Section 313 Cr.P.C. and thereafter moved an application under Section 311 Cr.P.C. for recalling the complainant for his further cross-examination, which was dismissed.

4. It is own case of the petitioner that respondent-complainant was duly cross-examined on 26.05.2022 and thereafter statement of the accused under Section 313 Cr.P.C. was recorded on 05.07.2022. The case was fixed for defence evidence when the application under Section 311 Cr.P.C. was moved. The application has been dismissed by the learned Trial Court by observing as under:

“I have heard the rival contentions of both the parties and perused the file carefully. By the way of present application applicant/accused intends to recall the complainant for further cross-examination on the ground that previous counsel of the applicant/accused has not put relevant documents/records regarding the raising of bills to the complainant. Perusal of the file shows that complainant was thoroughly cross-examined on 26.05.2022, statement of accused under Section 313 of Cr.P.C. was recorded on 05.07.2022 and now, present complaint is fixed for defence evidence. Further perusal of the file shows that the cross-examination of CW1 was conducted by previous counsel for the accused in the presence of accused in the Court. Accused could have raised this objection at that time or even on or before recording his statement under Section 313 of Cr.P.C. but he has not done so. It is not the case of accused that these documents were not within his knowledge or possession at that time. Therefore prayer for recalling the complainant for cross-examination is not tenable. It is well settled law that change of counsel is no ground to

*recall witness under Section 311 Cr.P.C.. Reliance is placed on law laid down in case titled as “Randhir Singh v. State of Haryana & ors” 2020 (1) RCR Crl 778 and in case titled as “Satish Nayyar v. State of Punjab” CRM-M-52048 of 2021 (P&H). Now, applicant cannot be allowed to fill up lacunas by moving such application and also cannot be allowed to recall the complainant for cross-examination again on the ground that previous counsel has not conducted the cross-examination properly or has failed to put documents to complainant. Moreover, the documents/records regarding the raising/payment of bills can be proved by accused during his defence evidence. Therefore, finding no merit in the present application, hence, same stands **dismissed** without expressing any opinion on merits of the case.”*

5. I do not find any illegality or material irregularity in the impugned order. Petitioner had availed full opportunity to cross-examine the witness-complainant. He cannot be allowed to recall the complainant simply because some suggestions were not put by his previous counsel. It has been observed by the Trial Court that cross-examination of complainant was conducted by the previous counsel of the petitioner-accused in his presence and therefore petitioner-accused could have raised the objection at that very time.

6. Finding no merit in the petition, same is hereby dismissed.

April 24, 2023

Neetika Tuteja

(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No