

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

264

Date of Decision: 05.12.2023

1. CRM-M No.47948 of 2022 (O&M)

Vijay Kalra	Petitioner
Vs	
Balwant Jain	Respondent

2. CRM-M No.51649 of 2022 (O&M)

Ish Kumari	Petitioner
Vs	
Balwant Jain	Respondent

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Ajit Singh Lamba, Advocate
for the petitioner(s).

Mr. Amit Singla, Advocate
for the respondent.

HARKESH MANUJA, J. (Oral)

[1]. Vide this common order, CRM-M No.47948 of 2022 and CRM-M No.51649 of 2022 are being decided as both the petitions involve similar question of law and facts, therefore, for brevity facts are being taken from CRM-M No.47948 of 2022.

[2]. By way of present petition under Section 482 Cr.P.C., challenge has been laid to the order dated 13.09.2022 (Annexure P-1) passed by Judicial Magistrate Ist Class, Hisar in Complaint No.NACT/552/2019 titled as '*Balwant Jain vs. Vijay Kalra*' whereby an application moved at the instance of petitioner

for seeking opportunity to cross-examine the complainant, before recording statement of accused-petitioner under Section 313 Cr.P.C. was dismissed.

[3]. Briefly stating, on account of dishonour of cheque dated 25.11.2018 amounting to Rs.1,25,00,000/-, respondent filed a complainant under Section 138 of the Negotiable Instruments Act (hereinafter to be referred as 'the N.I. Act') against the petitioner, wherein he was summoned vide order dated 04.07.2019. In pursuance thereof, petitioner put in appearance before the trial Court on 15.07.2022 and was admitted to bail. On the said date, notice of accusation was served upon the petitioner, to which he pleaded not guilty and claimed trial. The matter was listed for recording of statement of petitioner under Section 263(g)/313 Cr.P.C.

[4]. On the date fixed i.e. 06.08.2022, statement of the petitioner could not be recorded and the matter was thereafter adjourned to 06.09.2022. On the said date, the petitioner moved an application, seeking permission to cross-examine the complainant. The said application was opposed at the instance of respondent and vide order dated 13.09.2022, the Trial Court rejected the prayer made by the petitioner while observing that the statement of defence of the petitioner/accused was required to be recorded at the first instance before affording him opportunity to cross-examine the complainant/respondent.

[5]. Impugning the aforesaid order dated 13.09.2022, while relying upon the decision dated 21.04.2014, in case of **Indian Bank Association and others vs. Union of India and others, (2014) 5 Supreme Court Cases 590**, learned counsel for the petitioner(s) submits that in case the accused chooses to move an application before the Trial Court for seeking permission to cross-examine the

complainant before recording of his plea of defence, the said prayer needs to be accepted.

[6]. On the other hand, learned counsel representing the respondent submits that the petitioner was estopped by his own act and conduct as notice of accusation was served upon him on 15.07.2022 and the matter was adjourned twice for recording of plea of defence, but no such application was ever moved by the petitioner till 06.09.2022 and thus, the prayer was rightly declined by the Trial Court.

[7]. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made by learned counsel for the petitioner(s).

[8]. In the present case, no doubt on 15.07.2022 when the petitioner appeared before the Trial Court, he was admitted to bail. Having served upon with the notice of accusation and having claimed trial, no prayer was made by the petitioner for seeking permission to recall the respondent/complainant for effecting cross-examination upon him, yet the said prayer was undoubtedly made by the petitioner, before recording of his plea of defence under Section 313 Cr.P.C. and thus, following the law laid down by the Hon'ble Apex Court in **Indian Bank Association and others'** case (supra), the Trial Court was required to allow the same and permit him to recall the respondent/complainant for the purpose of effecting cross-examination upon him. The relevant portion from Para No.21 of **Indian Bank Association and others'** case (supra) is reproduced hereunder:-

“21. (iv) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice

under Section 251 of Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of re-calling a witness for cross-examination.”

[9]. In the humble opinion of this Court, no merit can be found in the plea raised on behalf of the respondent/complainant as there cannot be any estoppel against law. Once, the petitioner, who has been arrayed as an accused in the complaint under Section 138 of the N.I. Act, has right to recall the complainant for effecting cross-examination upon him, mere fact that the said application was moved after two hearings, cannot be accepted as a bar to decline the prayer made by the petitioner as it would term to be adopting of a hyper technical approach thereby causing serious prejudice to the rights of the petitioner besides denying him sufficient opportunity to defend himself.

[10]. Resultantly, in view of discussion hereinabove, both the petitions are allowed. The impugned orders dated 13.09.2022 and 17.10.2022 passed by the Judicial Magistrate Ist Class, Hisar are hereby set aside and the prayer made by petitioner(s) is allowed for recalling of the respondent-complainant for effecting cross-examination upon him, before the petitioner(s) could establish his/her plea of defence.

December 05, 2023
Atik

(HARKESH MANUJA)
JUDGE

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