

CRM-M-45096-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(121)

CRM-M-45096-2023

Date of Decision:- 12.09.2023

Ram Niwas Thapan

...Petitioner

VERSUS

Som Dutt Malethia

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gurbhagat Singh Gill, Advocate
for the petitioner.

SUVIR SEHGAL, J. (Oral)

1. By way of instant petition filed under Section 482 of the Code of Criminal Procedure, 1973, accused-petitioner has approached this Court for quashing of impugned order dated 04.07.2023, Annexure P-4, passed by the learned Judicial Magistrate, Abohar.

2. Factual matrix leading to the filing of the petition is that a complaint, Annexure P-1, has been instituted by the respondent under Section 138 of the Negotiable Instruments, 1881 (for short "the Act") alleging that the petitioner had borrowed a sum of Rs.5 lacs from him in May, 2019 and in discharge of his legal liability, he issued a post dated cheque for the said amount dated 20.05.2020 drawn on Axis Bank, Abohar Branch. Upon presentation, the cheque has been dishonoured on account of insufficient funds. After the closure of evidence and statement of the accused under Section 313, Cr.P.C., accused-petitioner filed an application dated 18.04.2023, Annexure P-2, under Section 311, Cr.P.C. for recalling

the complainant for further cross-examination. After contest, the application has been rejected by the Trial Court vide order assailed herein.

3. Counsel for the petitioner has contended that the impugned order is illegal as the Trial Court has wide power to summon any person as a witness or to recall and re-examine him even after the evidence of both the sides has been closed.

4. I have considered the submissions made by counsel for the petitioner.

5. Power conferred upon the Code under Section 311, Cr.P.C. is very wide, but it is to be invoked only to meet the ends of justice for strong and valid reasons. Power has to be exercised with caution and circumspection after taking into consideration the facts and circumstances of each case as has been held by the Hon'ble Supreme Court in ***Swapan Kumar Chatterjee Versus Central Bureau of Investigation (2019) 14 SCC 328***.

6. Facts of the instant case have to be examined in the light of the settled legal principles. While rejecting the application of the petitioner, Trial Court observed as under:-

“4. Present application has been filed by the counsel for accused for recalling the complainant for further cross examination and he has submitted that some material questions are left to be put to the complainant regarding other two connected complaints which are pending in this court. On other hand, counsel for complainant submitted that complainant was cross examined in length on

16.5.2022 and thereafter case was fixed for statement of accused under Section 313 Cr.P.C which was recorded on 22.11.2022 and thereafter case was adjourned for nine times and no application was ever moved for recalling the complainant and moreover, accused has failed to explain the questions which are material to be put to the complainant connected to the above said two complaint nor he has argued the same. Moreover, he has also failed to explain that what was the reason for not asking the material questions regarding above said two complaints at the time of cross examination already conducted on complainant on 16.5.2022 and why after taking so many opportunities he has moved the present application when the case is at fag end and the same shows that intention behind moving the present application is not to put material questions rather to linger on the proceedings. Hence, I do not find any justification for allowing application and therefore, the present application stands dismissed.”

7. Upon a specific query, counsel for the petitioner has submitted that the complainant has to be cross-examined regarding the other two complaints instituted by him. However, he has not been able to elaborate upon the connection between the other two complaints and the present one, nor could he explain the reason for delay in the filing of the application. An examination of the application, Annexure P-2, shows that no reason worth

the name has been given for the delay in moving it. There is nothing on the record to show nor is it the case of the petitioner that due opportunity was denied to him for cross-examining the witnesses. It is evident that the sole objective of moving the application under Section 311, Cr.P.C. at the advanced stage is to cause delay in the conclusion of the proceedings. This Court is of the view that the filing of the application is nothing, but an abuse of the process of law, which cannot be permitted. There is no illegality or impropriety in the order passed by the Trial Court requiring any interference by this Court.

8. Petition being meritless, is hereby dismissed.
9. Nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall proceed to apply its independent mind on the evidence adduced by the parties before it.

(SUVIR SEHGAL)
JUDGE

12.09.2023
Kamal

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No