

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

237

CRM-M-34073-2015 (O&M)
Date of decision: 17.02.2023

DARSHAN SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB & ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P.S. Ahluwalia, Advocate for the petitioner.

Mr. Kamalpreet Bawa, AAG Punjab.

Mr. B.S. Jaswal, Advocate for respondent No.2.

AMAN CHAUDHARY. J.

Present petition has been filed under Section 482 CrPC for setting aside the impugned orders dated 14.08.2015 (Annexure P-5) as well as order dated 17.09.2015 (Annexure P-7) passed by learned Judicial Magistrate 1st Class, Patiala in Complaint No.55 dated 19.04.2006 titled as 'Barender Randhawa Vs Darshan Singh' under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act').

Learned counsel submits that a complaint under Section 138 of the NI Act was instituted against the petitioner on 19.04.2006, who joined the said proceedings. During the cross-examination of the complainant, an application seeking re-examination was filed by the complainant which was allowed by the trial Court on 04.12.2010. The accused-petitioner challenged it before Additional Sessions Judge, and the said order was rightly set aside on 20.12.2011. The trial Court erroneously allowed the application filed by

the complainant to submit his supplementary affidavit in re-examination vide impugned order, whereas, the application filed by the accused-petitioner for summoning the defence witnesses was wrongly declined, which is also subject matter of challenge in this case. His submission is that on one hand, the learned trial Court allowed the re-examination of the complainant by way of affidavit, while on the other hand, observed that accused-petitioner would be given effective opportunity to cross examine the complainant, which is contradictory in nature. Allowing the complainant to file supplementary affidavit in re-examine would deprive him the right to cross-examine and will be prejudicial to the accused-petitioner. Reliance has been placed on the judgment passed by the Bombay High Court in the case of **Guruj Dhirendrarao Kadimdiwan @ G.D.K. Diwan Vs. Rajesh Wadhwa and another**, 2012(4) Bom.CR (Cri)779.

Learned counsel appearing on behalf of the complainant-respondent states that the reasoning of the learned trial Court on both counts, namely, permitting re-examination of the complainant by way of filing the supplementary affidavit and declining the accused petitioner for examination of the witnesses, who had been permitted to be summoned but could not be examined, are legally correct and thus, prays for the dismissal of the present petition.

Heard and perused the case file.

Facts as emerge are that it was the complainant, who when was being cross-examined on 8.7.2010, a document dated 6.8.2005 was put to him and the accused-petitioner questioned his signatures on the said document. Even on 31.8.2010 the petitioner had put him a document dated

28.11.2007 also questioning his signatures thereon. Thereafter, he filed the application under Section 311 CrPC to submit his supplementary affidavit in re-examination to explain the alleged documents to be forged and fabricated, the complainant having never executed the same.

The trial Court has while considering the facts and circumstances of the case, permitted re-examination of the complainant, to the said order as impugned, the sole objection raised by the learned counsel for the petitioner is to the effect that re-examination could not be permitted by filing of supplementary affidavit, which submission, this Court finds force in, as it stands fortified by the decision in the case by Bombay High Court in the case of **Guruaj Dhirendrarao Kadimdiwan**, (supra) wherein it was observed and held thus:-

“7. Now, the only limited question that arises is whether the evidence of the complainant in re-examination can be given by an affidavit.

8. The only basis for claiming that it can be done, is the provision of Section 145 of the N.I.Act., which reads as under :

"S.145. Evidence on Affidavit -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

xx xx xx xx

15. It has already been observed that I am not going into the question as to whether the decision to permit the complainant to be re-examined is proper or not, but only into the question, whether such re-examination can be done by permitting an affidavit of the complainant to be filed. In my opinion, it cannot be done. The oral

examination of a witness takes place in the presence of the court. The court can see what question is asked, what answer is given, and above all, how it is given. It is obvious that when an affidavit of evidence is prepared, the complainant or the concerned witness would be guided by his legal advisor and even by other persons. He would be told as to what should be stated and/or what should not be stated. The scheme of the Evidence Act is not to permit decision to be arrived at on the basis of affidavits, and it is only because of special provisions made under Section 145 of the N.I.Act, that the evidence of the complainant and witnesses, is permitted to be given on affidavit. Thus, Section 145 is basically an exception to the general rule that all facts except the contents of documents, must be proved by oral evidence. This provision therefore, cannot be stretched to mean that, even after a person has been cross examined, he would be permitted to file simply an affidavit by way of re-examination.

16. Apart from this, Section 145 itself makes it clear that the court would have a discretion in the matter. Sub-Section (2) clearly states that even in cases of examination in chief, the court may, if it thinks fit, summon and examine any person, as to the facts stated by him in affidavit. Thus, even in case of examination in chief, the court has been given a discretion of requiring the presence of the complainant or the witness concerned, and can question him about the facts stated in the affidavit.

17. In my opinion, Section 145 of the N.I.Act, cannot be interpreted in a way, so as to mean that the evidence in re-examination can be given by the complainant by filing an affidavit. That would be contrary to the scheme of the provisions of Evidence Act and the concept of fairness.

18. The Petition, therefore, succeeds to this extent. The order dated 21.3.2012, permitting re-examination of the complainant is maintained, with the clarification that such re-examination has to be as per the normal procedure i.e. by oral examination and not by filing any affidavit in lieu thereof.”

The trial Court on the other hand declined the application filed by the petitioner praying to summon the witnesses, the permission for which, though had been previously granted, but he erred in not producing

them. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better and “The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone”, were the observations of Hon’ble The Supreme Court of India in the case of **Rajendra Prasad vs. Narcotic Cell** (1999) 6 SCC 110. Further that the object underlying, Section 311 of CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side, the determinative factor is whether it is essential to the just decision of the case as held by Hon’ble The Supreme Court of India in the case of **Iddar and another vs. Aabbida and another** (2007) 11 SCC 211.

In view of the peculiarity of facts and circumstances of the case when considered in light of the judgments referred to hereinabove, this Court finds merit in the petition.

As a corollary thereto, the order dated 14.08.2015, Annexure P-5, is modified to the extent that the complainant-respondent is permitted to re-examine himself by normal procedure of oral examination, while the order dated 17.09.2015, Annexure P-7, is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to lead his

defence evidence subject to costs of Rs.15,000/- to be paid to the complainant.

The present petition stands disposed of accordingly.

(AMAN CHAUDHARY)
JUDGE

February 17, 2023

S.Sharma(syr)

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