

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122

CRM-M-58087-2023 (O&M)

Date of Decision : December 05, 2023

ABHIJEET SHARMA

-Petitioner

V/S

MAHIPAL SINGH

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Mohd. Parvez, Advocate
for the petitioner.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., a prayer is made for quashing/setting aside the order dated 02.11.2023 (Annexure P-5), as passed by the learned Magistrate concerned, whereby, the application under Section 311 of the Cr.P.C., as filed by the petitioner, in case bearing NACT No.36 of 2019, thereby seeking recalling of CW1/complainant for his cross-examination has been dismissed.

2. Before proceeding to evince any opinion upon the validity of the relief, as claimed herein by the petitioner, it is deemed imperative to extract some of the grounds, as mentioned by the petitioner/accused in the application (supra) for recall of CW1/complainant for cross-examination. The relevant paragraphs of the application (supra) are reproduced hereinafter:-

“5. That but inadvertently the few questions and suggestions to the witness/complainant CW1 has left, which are very important to bring out the truth before this Hon’ble Court.

6. That the suggestions that dealing of which nature was going on between the applicant/accused and the complainant due to which the complainant was able to get the possession of the cheques in question.”

3. Since the application (supra) was dismissed by the learned trial Court concerned, it has caused grievance to the petitioner and has driven him to this Court, thereby seeking one effective opportunity to cross-examine CW1/complainant.

4. The learned counsel for the petitioner, in his asking for the relief(s) (supra), submits that it is necessary to confront CW1/complainant with some documents, which include a self handwritten note of the complainant, as thereby only, the allegations levelled by the complainant would stand falsified. Lastly, he submitted that in case the asked for relief is not granted, it would cause prejudice to the petitioner/accused.

5. I have made a meticulous scrutiny of the application (supra) as well as the impugned order made thereon by the learned trial Court concerned.

6. The learned counsel for the petitioner does not dispute the factum that CW1/complainant was, on multiple occasions, subjected to lengthy cross-examination(s), by the learned counsel representing the petitioner/accused before the learned trial Court concerned. Moreover, he also does not dispute the factum that neither any whisper about any document(s), with which the petitioner/accused now wants to confront CW1/complainant, has been made in the application (supra), nor any reason(s) has been detailed therein, which caused impediment for the petitioner/accused to earlier confront CW1/complainant with the said documents, when he was given ample opportunity to do so.

7. Moreover, the averments too, as made in the application (supra) appear to be vague and evasive. It is a trite law that the power, as envisaged under Section 311 of the Cr.P.C., has to be cautiously exercised by the learned trial Court concerned, only if it has reason to believe that the same is essential for just decision of the case. However, for the learned trial Court concerned to form such a conclusion for exercise of power (supra), there has to be a concrete foundation laid by the applicant/accused, who approaches the court for exercise thereof.

8. In the instant case, the petitioner/accused has failed to lay down any such concrete foundation, thereby compelling the learned trial Court to exercise the power under Section 311 of the Cr.P.C. for recalling of CW1/complainant. Therefore, the learned trial Court, having been left with no other option, has rightly dismissed the application (supra), as made by the petitioner/accused for recalling of CW1/complainant.

9. For all the reasons (supra), this Court does not find any illegality or perversity in the order (supra), as impugned herein. Therefore, the instant petition is **dismissed**, being devoid of merits, and, the order dated 02.11.2023 passed by the learned Magistrate concerned is affirmed and maintained, being a well reasoned order.

10. All pending application(s) stand disposed of accordingly.

December 05, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No