



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

229 (02 cases)

CRM-M-15942-2018

Date of Decision.:30.05.2024

Anup Paul

.....Petitioner

Vs.

Gian Chand

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Hitesh Verma, Advocate
for the petitioner.

Mr. J.S. Cooner, Advocate
for the respondent.

DEEPAK GUPTA, J. (ORAL)

By way of this petition filed under Section 482 Cr.P.C., petitioner prays to quash the impugned order dated 02.02.2018 (Annexure P-3) passed by learned Sub-Divisional Judicial Magistrate, Kalka, whereby application under Section 311 Cr.P.C. moved by the petitioner- accused during the proceedings of complaint case No.NI Act 15 of 2013 titled “Gian Chand v. Anup Pal”, was dismissed.

2. Perusal of the paper-book would reveal that respondent-complainant Gian Chand filed the complaint in question to prosecute the petitioner- accused under Section 138 of the Negotiable Instruments Act. Statement of the complainant was recorded on 10.08.2017 and 24.08.2017.

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Complainant then tendered in his evidence various documents and exhibited them as Ex.C-8 to C-17 and mark X1 and X2. Petitioner- accused moved an application under Section 311 Cr.P.C. praying the Court to recall the complainant for the purpose of cross-examine him qua the documents which he had tendered on 06.01.2018. The application was dismissed by way of impugned order by observing that case was already fixed for recording the statement of accused under Section 313 Cr.P.C.

3. The contention of learned counsel is that petitioner did not get any opportunity to cross-examine the complainant- respondent in respect of the documents which he tendered in evidence, after completion of the statement.

4. Respondent- complainant opposed the petition.

5. Matter was also referred to the Mediation but the Mediation failed as per the report received from the Mediation Centre.

6. After hearing both the sides, this Court finds merit in the present petition.

7. Section 311 of Code of Criminal Procedure empowers every Court to recall or re-examine any person already examined at any stage of enquiry trial or other proceedings. Second part of the provision makes it mandatory for the Court to summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case.

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8. In the present case, during the recording of his statement on 10.08.2017 and 24.08.2017, respondent- complainant appears to have not intentionally tendered the documents Ex.C-8 to C-17 and mark X1 and X2, so as to avoid his cross-examination *qua* those documents. It is only after completion of his statement that he simply tendered those documents to be taken into consideration by the Court concerned. The petitioner- accused certainly deserve to be provided necessary opportunity to cross-examine the complainant in respect of these documents tendered by the complainant after completion of his statement. Learned Trial Court did not consider the said aspect and without giving any reasoning, dismissed the application by simply observing that case was already fixed for recording of statement under Section 313 Cr.P.C. In these circumstances, the impugned order cannot be sustained. The said order is hereby set aside.

9. Trial Court is directed to provide opportunity to the accused- petitioner so as to cross-examine the complainant- respondent in respect of the documents which have been tendered in evidence by the complainant after completion of his statement.

10. Both the parties are directed to appear before the trial Court concerned on 11.06.2024 for further proceedings. The trial Court shall adjourn the matter for recalling the complainant and to provide opportunity to the petitioner- accused so as to cross-examine him on the aspect of documents tendered by the complainant in his evidence as have been

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referred earlier.

Allowed accordingly.

(DEEPAK GUPTA)
JUDGE

May 30, 2024
Neetika Tuteja

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