

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR-908-2024

Date of Decision:-14.08.2024

Jagdish Kumar.

.....Petitioner.

Versus

Janak Raj.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Munish Garg, Advocate for the Petitioner
(Through Video Conferencing).

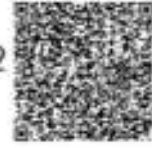
Mr. Hitesh Verma, Advocate for the Respondent.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 27.02.2024 passed by Additional Sessions Judge, Barnala vide which application of the petitioner for allowing him to examine Satish Kumar in his defence evidence has been dismissed.

2. The brief facts of the case are that petitioner was convicted under Section 138 of the Negotiable Instruments Act, 1881 by the Court of Judicial Magistrate Ist Class, Barnala vide judgment dated 06.02.2023. The copy of the said judgment is attached as Annexure P-1.

3. He preferred an appeal before the Court of Additional Sessions Judge, Barnala. During the pendency of the appeal, he moved an application for the examination of Satish Kumar (brother of the petitioner) as a defence witness. The copy of the application dated 19.09.2023 is attached as



Annexure P-3 to the petition.

4. In response to the application, the respondent/complainant filed a reply to the aforesaid application. The copy of the reply is attached as Annexure P-4.

5. Based on the respective pleadings and arguments of both the sides, the application came to be dismissed vide order dated 27.02.2024.

6. It is this order which is under challenge in the present petition.

7. The Counsel for the petitioner contends that his application to examine his brother Satish Kumar as a defence witness was moved as the cheque in question had been given as a security to the father of the complainant namely Satpal who had filed a complaint against Satish Kumar (brother of the petitioner) and the cheque in question was received by Satpal as a security for the loan availed by the brother of the petitioner and the brother had repaid the loan during the proceedings of the complaint filed by the father of the respondent/complainant Satpal. The instant application had not been moved earlier as Satish Kumar was unfit to depose. He therefore contends that the impugned order was liable to be set aside and permission be granted to examine Satish Kumar as a defence witness by way of additional evidence.

8. The Counsel for the respondent/complainant on the other hand contends that Satish Kumar brother of the petitioner was discharged on 16.08.2018. The statement of the petitioner/accused under Section 313 Cr.PC was recorded on 29.02.2021 and the judgment of conviction was recorded only on 06.02.2023. At no stage did the petitioner accused make any effort to examine Satish Kumar as a defence witness despite almost 1-1/2 years having elapsed from the date of recording of the Statement under Section 313 Cr.PC on 29.09.2021 upto the date of conviction dated



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06.02.2023. He further contends that the defence’s plea of the cheque having been received by Satpal father of the respondent/complainant is an afterthought. Therefore, the present petition was liable to be dismissed.

9. I have heard counsel for the parties.

10. A perusal of the record would reveal that Satish the brother of the petitioner was discharged from the hospital on 16.08.2018. The statement under Section 313 Cr.PC was recorded on 29.09.2021 and the petitioner was convicted on 06.02.2023. Despite multiple opportunities, at no point of time was an attempt made by the petitioner to examine Satish Kumar was a defence witness. Apparently the present application has been moved at this stage with a view to delay the proceedings or to set up a defence completely contrary to the stand taken during the course of the trial wherein mere false implication has been pleaded.

11. In view of the above, I find no merit in the present petition and the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 14, 2024
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>