

268

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.55749 of 2022 (O&M)
Date of decision: 08.04.2024

Dilbagh Singh DagarPetitioner

Versus

Smt. Shakuntla ChaudharyRespondent

CORAM: HON’BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Rakesh Dhiman, Advocate for the petitioner.

Mr. Sandeep Vermani, Advocate for the respondent

PANKAJ JAIN, J.(ORAL)

1 Learned counsel for the petitioner Mr. Rakesh Dhiman, Advocate submits that he will not place reliance upon the documents which are part of the record pertaining to complaint bearing No.8026.

2 While issuing notice of motion following order was passed :-

“Learned counsel for the petitioner submits that the petitioner is an accused in a complaint filed under Section 138 of the N. I. Act and while leading defence evidence, the petitioner has summoned DW-13 Samarjeet Singh, who is husband of the complainant/respondent, as the primary dispute is with regard to some committee business, which the complainant was running and the petitioner has given her security cheques.

It is further submitted that the statement of DW-12 Samarjeet Singh was recorded on 01.09.2022 and as the said witness was not recording the correct statement, by allowing the 'questions and answers', the petitioner was granted permission to cross examine the

said witness. Later, on account of Court time being over, the further cross-examination was deferred and vide order dated 12.09.2022, the trial Court has declined a request made by the petitioner to declare the said witness as hostile on the ground that since no previous statement is on record, which the witness has backed out, therefore, for declaring him hostile, there must be something to confront him.

Learned counsel for the petitioner further submits that the trial Court, however, further scored off part of the statement, which is already recorded by making the following observations:

“The said witness was summoned by the Ld. defence counsel and he himself cross examined him, therefore, his testimony cannot be read into evidence. Therefore, the same (testimony of witness) is struck off with the permission to examine the said witness afresh on his own behalf. It is made clear that no summons/assistance of the court will be given to the accused for calling the said witness in the court. Ld. defence counsel, if willing to examine the said witness, he will bring him on his own in the court. Adjournment sought. Heard and allowed.”

Learned counsel for the petitioner further submits that once the statement has already been recorded, in the 'questions and answers', the permission has been granted to put all the defence, which goes in favour of the petitioner, therefore, the trial Court cannot strike off the testimony of the witness which is already recorded by passing the impugned order.

Learned counsel for the petitioner further submits that thereafter, the petitioner moved an application for modification of the said order, however, the same was declined, vide another impugned order dated 03.10.2022.

Notice of motion for 13.04.2023.

In the meantime, the operation of the impugned orders shall remain stayed and the statements of DW-12 and DW-13 will be recorded by the trial Court from the stage of recording as on 01.09.2022.”

3 Petitioner herein has been summoned to face trial in Criminal Complaint (N.ACT) bearing No.8601 of 16.07.2016 registered for offence punishable under Section 138 of the Negotiable Instruments Act (for short NI Act). In his defence evidence he examined Samarjeet Singh who happens to be husband of the complainant-Shakuntla Chaudhary. The challenge by the petitioner is on two counts; first with respect to non-declaration of DW-12 as hostile and second to the scoring of the part of the statement which the said witness got recorded before the trial Court.

4 In the considered opinion of this Court, no fault can be found with the order passed by the trial Court whereby the Court declined request made by the petitioner to declare DW-12 as hostile as there was no prior testimony recorded to confront the said witness in order to ascertain the hostility of the said witness. So far as the second issue is concerned, trial Court erred in scoring of the statement of the said witness as once the witness has been examined and his statement recorded by the trial Court, there is no power vested in the Court to score of the testimony or part of the testimony of a witness.

5 In view of above, the impugned order dated 12.09.2022 (Annexure P-10) is modified to the extent that the later part of the order scoring of the testimony of DW-12 is hereby ordered to be deleted. The following part of the order shall be deemed to have been deleted :-

“The said witness was summoned by the Ld. Defence counsel and he himself cross examined him, therefore, his testimony cannot be read into evidence.”

- 6

Disposed off accordingly.
- 7

In view of above order Annexure P-12 has been rendered odious.
- 8

Pending miscellaneous application, if any, also stands disposed off.

08.04.2024

Pooja Sharma-I

(PANKAJ JAIN)

JUDGE

Whether speaking/reasoned:

Whether reportable:

Yes/No

Yes/No