

2025:PHHC:178608



CRM-M-63586-2024 (O&M) -1-

**(226) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-63586-2024 (O&M)
Date of decision : 24.12.2025**

SONIK MEHTA

... Petitioner

Versus

JAGDISH SINGH

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA (ORAL)

Present: Mr. Ajit Singh Lamba, Advocate for the petitioner

Mr. Kartik Parmod Goyal, Advocate for the respondent.

MANISHA BATRA, J. (ORAL)

1. The instant petition has been filed by the petitioner for quashing of order dated 02.12.2024 passed in Criminal complaint bearing CIS No.NACT/2396/2020 titled as “*Jagdish Singh Vs. Sonik Mehta*” filed under Section 138 of the Negotiable Instruments Act, 1881 (for short “NI Act”) and pending before the Court of learned Judicial Magistrate, First Class, Hisar, whereby an application filed by the petitioner for conducting cross-examination of the respondent-complainant before recording plea of defence under Section 263(G) of Bharatiya Nagrik Suraksha Sanhita, 2023 was dismissed.

2. The respondent-Jagdish Singh has filed the aforementioned complaint against the present petitioner, who vide order dated

**CRM-M-63586-2024 (O&M) -2-**

01.02.2021 has been summoned as an accused for commission of offence punishable under Section 138 of NI Act. As emanating from the record, he surrendered before the learned Trial Court on 28.08.2024 and was admitted to bail. The matter proceeded further for recording his plea of defence. The petitioner filed an application on 01.04.2025 for allowing him to conduct cross-examination of the respondent-complainant before recording his plea of defence, however, the said application has been dismissed by the learned Trial Court and feeling aggrieved from the said order, this petition has been filed.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned Trial Court ignored the fact that he had a right to cross-examine the complainant before recording his plea of defence and could not be deprived of the said right on the ground that his plea of defence had not been recorded. It is, hence, argued that the petition deserves to be allowed. In support of his contention, learned counsel for the petitioner has relied upon authorities cited as ***Indian Bank Association and Others Versus Union of India and others (2014) 2 SCC (Cri) 652 and Ashish Aggarwal Versus Sushil Kumar 2021 ACD 344.***

4. Per contra, learned counsel for the respondent has argued that the impugned order does not suffer from any illegality or infirmity and had been passed in accordance with law by giving detailed reasons. It is, therefore, stressed that the petition is devoid of any merit and is liable to be dismissed.

**CRM-M-63586-2024 (O&M) -3-**

5. This Court has heard the rival submissions made by learned counsel for both the parties at considerable length.

6. On a perusal of record, it is revealed that after appearing before the learned Trial Court and after being admitted to bail, the petitioner was asked to record his plea of defence in accordance with the provisions of Section 263(G) of the Code of Criminal Procedure. However, he filed an application under Section 145(2) of NI Act, thereby making prayer for granting opportunity to firstly cross-examine the respondent-complainant and the said prayer has been declined.

7. At the outset, it will be proper to refer to Section 145 of NI Act which reads as follows :-

“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.”

The scope of Section 145 was discussed by Hon’ble Supreme Court in ***Radhey Shyam Garg Versus Naresh Kumar Gupta, (2009) 13 SCC 201***

and it was observed that once an affidavit in terms of provisions of

**CRM-M-63586-2024 (O&M) -4-**

Section 145 of NI Act has been filed by a complainant, the same is to be considered as evidence and the witness/complainant can be cross-examined by treating the said affidavit as his examination-in-chief.

8. In *Indian Bank Association and Others case (supra)*, the Hon'ble Supreme Court had observed that the complainant can give evidence by way of an affidavit under Section 145 of the NI Act and such affidavit shall be read in evidence in any enquiry, trial or other proceeding in the Court unless the Magistrate passes a specific order as to why he should be recalled. It was further directed that when an accused appears to furnish a bail bond before the Trial Court to ensure his appearance during trial, the Court should ask him to take notice under Section 251 of Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination. This is what that has been exactly done by the petitioner in this case as after entering his appearance, he moved an application for recalling the complainant for the purpose of his cross-examination. However, the learned Trial Magistrate denied that opportunity on the ground that his plea of defence under Section 263(G) was to be recorded firstly. In the considered opinion of this Court, the Trial Magistrate could not have done the same since Section 145(2) of NI Act mandates that once an application is filed by the accused, the Court is obliged to summon the person, who has given evidence on affidavit in terms of

2025:PHHC:178608



CRM-M-63586-2024 (O&M) -5-

Section 145(1) of the NI Act. Similar observations were made by High Court of Delhi in *Ashish Aggarwal's case (supra)*.

9. In view of the discussion as made above, this Court is of the considered opinion that the impugned order is not sustainable in the eyes of law. Accordingly, the same is set aside. The application as filed by the petitioner before the learned Trial Court for granting him opportunity to cross-examine the respondent is allowed and the Trial Court is directed to grant sufficient opportunity to the complainant to conduct cross-examination of the complainant. Petition stands disposed of, accordingly.

10. It is, however, clarified that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case.

11. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

(MANISHA BATRA)
JUDGE

24.12.2025
Amit Sharma

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