

(1996) 08 P&H CK 0027

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 14208-M of 1996

Mrs. Madhu Bansal

APPELLANT

Vs

Shri. Dinesh Kumar

RESPONDENT

Date of Decision: Aug. 21, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 252, 253, 254, 254(1), 254(2)
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (1997) 1 CivCC 5 : (1997) CriLJ 2020 : (1996) 3 RCR(Criminal) 459 : (1996) 3 RCR(Criminal) 502

Hon'ble Judges: S.S. Sudhalkar, J

Bench: Single Bench

Advocate: S.D. Sharma and Surinder Sharma, for the Appellant;

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

S.S. Sudhalkar, J.

The petitioner has filed a criminal case in the Court of Judicial Magistrate 1st Class, Chandigarh against the present respondent for the offence u/s 138 of the Negotiable Instruments Act. In the said case the respondent has given an application for summoning of witnesses as his defence witnesses. The said application was allowed by the learned Judicial Magistrate. This application is filed for quashing the said order.

2. I have heard learned counsel for the petitioner.

3. Learned counsel for the petitioner has argued the following points:

(i) Witness No. 1, mentioned in the impugned application annexure P/6, was already examined by the complainant and that he was also recalled for cross-examination;

- (ii) The application, annexure P/6 is given only to delay the proceedings;
- (iii) No reason is stated for making a prayer for summoning the witnesses;
- (iv) Witness mentioned at serial No. 2 has no concern.

Learned Judicial Magistrate has passed the impugned order, annexure P/8, considering Section 254(1) Cr. P. C. (for short "the Code"). The provision of Section 254 of the Code does not debar an accused from examining a witness who has already been examined by the complainant/prosecution as his witness. On the contrary, if the complainant's or prosecution witness is again examined by the accused as a defence witness, the prosecution/complainant gets a right to cross-examine the witness. Therefore, if the accused examines such a witness, it will be at his own peril and the complainant cannot be prejudiced by the said act of the accused.

4. Regarding the second point, (of delay), it will be pre-mature at this stage to say that the application for summoning the defence witnesses is for delaying the proceedings. The accused has a right to examine witnesses in his defence and he cannot be denied the same.

5. The next point argued by learned counsel for the petitioner is that no reason has been stated for summoning the witnesses. He has relied on Sub-section (2) of Section 254 of the Code. The words are "the Magistrate may if it thinks fit...issue summons to any witness..."(emphasis supplied). Putting emphasis on the word "may", learned counsel for the petitioner has argued that the Magistrate should have used its discretion and for using its discretion, the reasons for summoning the witnesses should have been given. However, Sub-section (2) of Section 254 of the Code has not to be read in isolation. It has to be read with Sub-section (1) of that section. Sub-section (1) of Section 254 of the Code reads as under:-

If the Magistrate does not convict the accused under Sections 252 or 253, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produced in his defence."

(Emphasis supplied)

The word shall in Sub-section (1) of Section 254 of the Code is important and it gives a right to the party to lead evidence. Sub-section (2) of Section 254 of the Code only specifies for issuing the summons to witnesses. Leading of evidence includes examination of witnesses. Summoning the witnesses is another thing. A witness can be examined even without issuance of summons, if a party keeps him present. However, if a party thinks that it cannot keep the witness ready without summons, he may ask for the summons and, therefore, Sub-section (2) deals with summoning only and not with the right of the accused to examine the witness. If reasons are not stated in the orders of issuance of summons, the order at the most be said to be

irregular and not illegal.

6. The next point argued by learned counsel for the petitioner is that witness mentioned at serial No. 2 has no concern. Whether any witness has any concern or not, cannot be decided before he is examined and, therefore, this argument does not help the petitioner.

7. In the case of [S.M. Basappa Vs. B. Anand Rao](#), it has been held by the Apex Court that, it is rather peremptory requirement for a Magistrate u/s 255 to take evidence referred to in Section 254 and such further evidence if any as he may, on his own motion, cause to be produced to find if the accused is not guilty upon such evidence and only, thereafter, he can record the order of an acquittal, and if he does not do so he commits an error of law which need to be corrected by the appellate Court. That was a case where the complainant had sought an adjournment to produce documentary evidence but the same was rejected by the Magistrate and the evidence was shut out and the order of acquittal was passed. It can be seen that Section 254 of the Code is not limited to the evidence of prosecution only. It also deals equally with the defence evidence if the accused wants to produce the same. Therefore, the principle laid down in the case of S.M. Basappa v. B. Ananda Rao (supra) clearly goes against the petitioner.

8. It has been held that the Hon'ble Supreme Court in the case of [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), that the power of the High Court u/s 482 Cr. P.C. being an extraordinary one has to be exercised sparingly.

9. Considering the above facts and principles this petition without merit and is dismissed.