(2011) 11 P&H CK 0145

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-33431 of 2011 (O and M)

Amarjit Singh		APPELLANT
	Vs	
State of Haryana and another		RESPONDENT

Date of Decision: Nov. 4, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Alok Singh, J

Bench: Single Bench

Judgement

Hon''ble Mr. Justice Alok Singh

1. Petitioner is assailing order dated 12.10.2011 passed by Judicial Magistrate Ist Class, Jagadhri, whereby application moved by the petitioner/complainant u/s 311 Cr.P.C., was dismissed.

2. Brief facts of the present case are that petitioner has filed a complaint u/s 138 of the Negotiable Instruments Act, which was pending before Ms. Jasmin Sharma, the then Judicial Magistrate Ist Class, Jagadhri. On 5.4.2008, two witnesses of the complainant i.e. Clerk of Punjab National Bank, Bilaspur, and Clerk of Punjab & Sind Bank, Yamuna Nagar, had appeared, however, on that day accused was not present and case was adjourned after recording presence of the witnesses; on 6.12.2008 accused surrendered before the Court and was released on bail, however, case was adjourned for 2.5.2009 for the evidence of the complainant. On 19.9.2009 again abovesaid two witnesses were present before the Court, however, case was adjourned because Presiding Officer of the Court i.e. Ms. Jasmin Sharma, the then Judicial Magistrate Ist Class, Jagadhri, was on leave, however, presence of the witnesses was marked on the record. Thereafter case was transferred to the Court of Ms. Swati Sehgal, Judicial Magistrate Ist Class, Jagadhri. Statement of the

complainant was recorded on 25.2.2011, however abovesaid two witnesses were not present, hence evidence of the complainant was closed. Thereafter, complainant/petitioner has moved present application requesting the Court to summon two witnesses, who remained present before the Court on the earlier two occasions for evidence, which was declined by the learned Magistrate vide impugned order.

3. I have heard Learned Counsel for the petitioner and have perused the record.

4. The golden rule that sufficient opportunity should be granted to both the parties to lead evidence and place material on the record, is fully applicable in the present case. Case of the petitioner should not be thrown out because on earlier occasions witnesses could not be examined and were not present when complainant was examined.

5. Considering the totality of the facts and circumstances of the case and in the interest of justice, I find that an opportunity should be granted to the complainant/petitioner to summon both the witnesses, who remained present on earlier occasions before the Court.

6. Present petition is disposed of with the direction that learned Judicial Magistrate shall fix a date for recording of the statements of two witnesses i.e. Clerk of Punjab National Bank, Bilaspur, and Clerk of Punjab & Sind Bank, Yamuna Nagar, for effective adjudication of the case. Petitioner/complainant shall get issued summons of abovesaid two witnesses. Petitioner shall pay Rs. 10,000/- as cost as a pre-condition to the OP/respondents.