

(2012) 12 P&H CK 0190

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. M-40487 of 2012 (O and M)

Rama Exports India and Another

APPELLANT

Vs

Anuj Khullar

RESPONDENT

Date of Decision: Dec. 19, 2012

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313, 482
- Negotiable Instruments Act, 1881 (NI) - Section 138

Hon'ble Judges: Sabina, J

Bench: Single Bench

Advocate: G.S. Punia, for the Appellant;

Judgement

Sabina, J.

Petitioners have filed this petition u/s 482 of the Code of Criminal Procedure, 1973 ("Cr. P.C." for short) challenging the orders dated 24.8.2012 (Annexure P-1) and 28.2.2012 (Annexure P-2) whereby the application filed by the petitioner u/s 311 Cr. P.C. was dismissed. Respondent has filed a complaint against the petitioner u/s 138 of the Negotiable Instruments Act, 1881 with regard to dishonour of cheque dated 15.11.2008 in the sum of ` 2,00,000/-. Complainant led his evidence and thereafter, statement of the petitioner was recorded u/s 313 Cr. P.C. Thereafter, an application was filed by the petitioners u/s 311 Cr. P.C. for recalling the respondent for further cross examination. The Trial Court dismissed the said application vide impugned order dated 28.2.2012 (Annexure P-2). Revision petition filed by the petitioner against the said order was dismissed vide order dated 24.8.2012 (Annexure P-1). Hence, the present petition.

2. After hearing the learned counsel for the petitioners, I am of the opinion that the instant petition deserves dismissal.

Section 311 Cr. P.C. reads as under:-

311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

3. Thus, as per the above provision, the Court has ample power to recall a witness for further examination if it is necessary for the just decision of the case.

4. In the present case, the respondent-complainant was duly cross-examined by the defence counsel. It appears that the application u/s 311 Cr. P.C. was filed on account of change of counsel by the petitioners. The said fact is no ground to seek the recalling of the complainant for further cross-examination. Thus, both the Courts below have rightly held that the application u/s 311 Cr. P.C. was liable to be dismissed.

5. It is a settled proposition of law that the petitioner cannot invoke jurisdiction of this Court u/s 482 Cr. P.C. after dismissal of his revision by the Sessions Court as it would amount to a second revision. However, in a case of grave injustice, this Court can interfere u/s 482 Cr. P.C.

6. In the present case, no grave miscarriage of justice has occurred which would warrant interference by this Court u/s 482 Cr. P.C.

7. Keeping in view the facts and circumstances of the present case, no ground for interference is made out. Dismissed.