

**Suresh Vs. Ashok**

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**SooperKanoon Citation :** [sooperkanoon.com/501238](http://sooperkanoon.com/501238)

**Court :** Madhya Pradesh

**Decided On :** Jan-16-2008

**Reported in :** 2008(2)MPHT58

**Judge :** Rakesh Saxena, J.

**Appellant :** Suresh

**Respondent :** Ashok

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Rakesh Saxena, J.**

1. Petitioner has filed this revision against the order dated 20-9-2007, passed by Judicial Magistrate First Class, Pandurna, in Criminal Case No. 263/07, rejecting the application filed by petitioner for getting defence witnesses examined on affidavit in view of the provisions under Section 145 (2) of the Negotiable Instruments Act.

Section 145 of the Negotiable Instruments Act is reproduced hereunder:

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 proceedings 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.

2. On a bare perusal of Section 145(1) of the aforesaid Act, it is apparent that it is only the complainant who can give evidence of his witnesses on affidavit in any enquiry, trial or other proceedings under the Act. Sub-section (2) of the Act provides that the Court shall, on the application of prosecution or accused, may summon and examine any person giving evidence on the affidavit as to the facts contained in the said affidavit. It is apparent that Sub-section (2) of Section 145 of the Act permits accused to call for witnesses for the purpose of cross-examination, who have given their evidence on affidavit. This right can also be exercised by the prosecution, if Court thinks fit. In the above provision, it is nowhere provided that right to examine the witnesses on affidavit can be availed by the accused. The words in Sub-section (2) of Section 145 of the Negotiable Instruments Act 'summon and examine any person giving evidence on affidavit' pertain to a person whose evidence the prosecution has tendered by the affidavit.

3. In view of the above position of law, I do not find any error in the impugned order passed by the Trial Court refusing to permit accused to examine his witnesses on affidavit. Accordingly, this revision is dismissed.

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