

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 26.05.2015

1. CRM-M-14511-2013

Pinderpal Singh

... Petitioner

Vs.

Gurcharan Singh

... Respondent

2. CRM-M-15134-2013

Pinderpal Singh

... Petitioner

Vs.

Gurcharan Singh

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. D.S. Malwai, Advocate
for the petitioner.

Mr. K.B. Raheja, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK J.(ORAL):

Two identical criminal miscellaneous petitions bearing No.CRM-M-14511-2013 & CRM-M-15134-2013 between the same parties, wherein identical impugned orders are under challenge are proposed to be decided vide this common order because issues are exactly the same.

Petitioner, by way of instant petition under Section 482 Cr.P.C., seeks quashing of the orders dated 16.11.2012 (Annexure P-5) passed by learned

Judicial Magistrate 1st Class, Malerkotla and also the order dated 20.04.2013 (Annexure P-6) passed by learned Addl. Sessions Judge, Sangrur, whereby evidence of the petitioner-accused was closed by order of the Court which was upheld, while dismissing the revision of the petitioner.

Notice of motion was issued.

Learned counsel for the petitioner, while referring to the service reports at Annexures P-1 to P-3, submits that petitioner was not at fault. However, the learned trial Court misdirected itself while closing the defence evidence of the petitioner. Again, the learned Addl. Sessions Judge failed to appreciate the factual as well as legal aspect of the matter, while passing the impugned order dated 20.04.2013 (Annexure P-6). He submits that a serious prejudice has been caused to the petitioner who was the only accused in the complaint filed by the respondent under Section 138 of Negotiable Instruments Act, 1881. He prays for allowing the present petition, by setting aside both the abovesaid impugned orders.

On the other hand, learned counsel for the respondent-complainant submits that the petitioner has not allowed the trial to proceed further for an inordinate long period of more than four years, while avoiding service on him. Summoning order was issued against the petitioner as far back as on 07.07.2005 but he appeared in the Court on 31.12.2009, after having been declared proclaimed offender on 09.12.2009. He further submits that petitioner proceeded on a casual approach, while not adducing his evidence in time. In such a situation, both the learned Courts have passed the judicious orders which deserve to be upheld. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, referred to hereinabove, both the impugned orders passed by the learned Courts below have been found to be patently illegal and same cannot be sustained. It is so said because a bare perusal of the numerous service reports contained in Annexures P-1 to P-3 would show that petitioner was not at fault, in this regard. However, the learned trial Court without appreciating the abovesaid factual aspect of the matter, which was very much part of the judicial record, passed the impugned orders dated 16.11.2012 (Annexure P-5) thereby closing the defence evidence of the petitioner. Similarly, the learned Addl. Sessions Judge also failed to appreciate that a serious prejudice has been caused to the petitioner by the order passed by the learned trial Court. Having said that, this Court feels no hesitation to conclude that the learned Courts below fell in serious error of law, while passing the impugned orders and the same cannot be sustained.

During the course of hearing, when a pointed question was put to learned counsel for the respondent as to how, he justify passing of the impugned orders at the hands of learned Courts below, he had no answer and rightly so, because it was a matter of record. Background of the case before appearance of the petitioner cannot be made a ground for causing such a serious prejudice to the petitioner who was an accused in the present case. The learned trial Court as well as the learned revisional Court ought to have appreciated that petitioner was not at fault while summoning the only left over DW who was the concerned Moharrar Head Constable of the concerned police station. In such a situation, more opportunity was required to be granted to the petitioner to lead his defence

evidence so as to prove the cancellation report by producing the concerned Moharrar Head Constable. Under these circumstances, both the impugned orders passed by the learned Courts below have been found suffering from patent illegality and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present petitions deserve to be allowed and the same are hereby allowed. Impugned orders dated 16.11.2012 (Annexure P-5) and order dated 20.04.2013 (Annexure P-6) are hereby set aside. Consequently, learned trial Court is directed to grant more opportunity to the petitioner to produce his left over defence evidence, so as to enable him to prove the factum of cancellation report by producing the concerned Moharrar Head Constable. The learned trial Court shall make endeavour to ensure the presence of concerned Moharrar Head Constable so that he is examined by the petitioner in his defence evidence.

Resultantly, with the abovesaid observations made and directions issued, present petitions stand allowed, however, with no order as to costs.

26.05.2015
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[RAMESHWAR SINGH MALIK]
JUDGE