

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3381-2016 (O&M)

Date of decision: October 18, 2016.

Naval Kishore

... **Petitioner**

v.

Kuldeep Singh Kharbanda

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri PBS Goraya, Advocate for the petitioner.
Shri Vivek Salathia, Advocate for the respondent.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith.

Shri Vivek Salathia, Advocate appears for the respondent.

Learned Counsel for the petitioner submitted that his application under Section 391 Cr.P.C. for tendering additional evidence, that too in the form of documentary evidence only, namely, to file and prove the income tax returns of the complainant, has been rejected on the ground that the petitioner had not availed of the opportunity to do so before the trial court or even before the appellate court for a number of years.

Learned Counsel for the petitioner has cited the decision of the Supreme Court in the case of K. Subramani v/s K. Damodara Naidu, 2015 (1) Civil Court Cases 001 (SC). He submitted that the income tax returns are official documents and there was a lapse in not calling them and hence the delay in filing the application for tendering additional evidence.

According to him, the petitioner deserves to be given one last chance to

produce the said documentary evidence on record irrespective of the assessment of those documents.

Per contrary, learned counsel for the respondent vehemently opposed this petition and supported the impugned order inviting my attention to para 3 of the impugned order wherein there is a clear mention that 46 opportunities were granted to the petitioner for a period of three years to lead defence evidence but no attempt was made to produce the income tax returns nor any steps were taken before the trial court to tender any such evidence. According to him, the petitioner is deliberately delaying the proceedings including the appellate proceedings in order to avoid the sentence awarded to the petitioner. He further invited my attention to the zimni orders for a period of three years and submitted that the conduct of the petitioner before the trial court in delaying the proceedings does not entitle him for any relief from this Court.

I have perused the impugned order, so also the reasons given by the appellate court in para 3. It is true that the petitioner had not got filed the income tax returns of the complainant and had for three years consumed the time of the court for availing of the opportunity to lead defence evidence. Not only this, it is also true that the petitioner did not file any application when the appeal was filed by him and it is almost at the stage of final arguments that such an application for additional evidence was filed.

Nevertheless, now the petitioner wants to produce and prove the income tax returns from the Department. In my opinion, the petitioner's contention that the income tax returns did not reflect the amount in the

income tax returns would be a relevant aspect though the petitioner had failed to grab that opportunity before the trial court since the defence of the petitioner is about the very availability of the sum of Rs.17,70,000/- with the complainant. After all, the fact about the income tax returns is a matter of official record and therefore to deny the opportunity, though the petitioner is at fault, would be harsh since the appellate proceedings are eventually pending. But then, the petitioner cannot be allowed to have such opportunity without being penalized or the complainant being suitably compensated. I am therefore of the opinion that the petitioner should be saddled with costs in the sum of Rs.50,000/- in view of the delay made by him in asking for tendering the evidence by way of income tax returns by summoning the evidence from the Income Tax Department as a pre-condition for tendering of evidence.

In view of the delay in proceedings noted above, I think instead of asking the trial court to record additional evidence and looking to the documentary evidence to be adduced, it should be the appellate court who should record the evidence in one or two dates. The petitioner is free to give notice to the complainant to admit income tax documents in the event of they being produced before the appellate court from the Income Tax Department and if the complainant does not admit those documents, the court should proceed to record the evidence of the witness from the Income Tax Department with due opportunity to cross examine the witness to be given to the complainant. The upshot of the above discussion is that the following order is to be passed:-

ORDER

- (i) CRR-3381-2016 is allowed;
- (ii) the impugned order is quashed and set aside;
- (iii) the application for additional evidence for summoning Income Tax Department record, relevant to the present case, is allowed;
- (iv) it shall be the responsibility of the petitioner to get the income tax Department record before the appellate court;
- (v) the appellate court shall record the evidence in the light of the observations made above by giving full opportunity to the complainant as well;
- (vi) the petitioner shall deposit the cost payable to the complainant by cash in the court to be paid over to the complainant as a pre-condition for summoning the income tax department record;
- (vii) after recording of the evidence, the appellate court shall decide the appeal as expeditiously as possible and in any case within four months from today;
- (viii) parties to appear before the appellate court on the date fixed.

[**A.B. Chaudhari**]
Judge

October 18, 2016.
kadyan

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No