

254

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 11435 of 2017
Date of Decision: 03.11.2017

Rakesh Mohan

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Aman Sharma, Advocate,
for the petitioner.

Mr. Hittan Nehra, Additional Advocate General, Punjab,
for respondent No. 1.

Mr. Deepak Sonak, Advocate,
for respondent No. 2.

None for respondent No. 3.

Mr. Raman Sharma, Advocate,
for respondent No. 4.

SUDIP AHLUWALIA, J. (ORAL)

The petitioner is aggrieved with two orders passed by the Court of the Ld. Chief Judicial Magistrate, Derabassi, dated 15.07.2016 and 03.02.2017, being Annexures P-8 and P-10, respectively. He had approached the Ld. Court below for recalling the initial order dated 15.07.2016, but it was dismissed vide second order (Annexure P-10).

2. His contention before this Court is that out of sheer mistake,

his preliminary evidence was closed on the original date, i.e. 15.07.2016, when his Advocate did not appear in the Ld. Trial Court, on account of being engaged elsewhere. There was apparently some miscommunication/misunderstanding in the instructions conveyed by the concerned Junior Advocate, which resulted in closure of the preliminary evidence, even though the petitioner had summoned witnesses on the relevant date after depositing process fees and requisites.

3. It is submitted on behalf of the respondents that they have been unnecessarily made to appear in the present petition, since their stage for appearance, if at all warranted in the original complaint case, has not yet arrived.

4. It is a settled position of law that a litigant cannot be made to suffer the consequences of any omission/laches on the part of his Counsel.

5. In the present case, it appears that the apparent mistake/miscommunication resulting into pre-mature closure of the petitioner's preliminary evidence in the complaint was on account of the absence of his regular Counsel on the relevant date.

6. This, therefore, appears to be a fit case of intervention by this Court.

7. However, the respondents on whom notice has been needlessly served at this stage, when the preliminary evidence on the basis of which the Ld. Trial Court ought to have subsequently taken a decision regarding issuance of process against the respondents, they certainly deserve to be awarded appropriate compensation for having been made to appear before this Court, when not yet required.

8. Consequently, the present petition is allowed subject to consolidated costs of ₹ 9,000/- (Rupees Nine Thousand Only) payable in favour of respondents No. 2, 3 and 4.

9. The impugned order passed by the Ld. Trial Court is set aside with a direction to grant opportunity to the petitioner/complainant, after verifying that the costs have been paid, to complete his preliminary evidence within two dates to be determined by the Ld. Court below, and thereafter to proceed further in accordance with law.

03.11.2017

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No