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253 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-16112-2015(O&M)
Date of decision:29.11.2017

Subash Uppal ...Petitioner

Versus

Gian Singh ...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. B.S.Bhalla, Advocate
for the petitioner.

None for the respondent

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 10.04.2015 (Annexure P-3) passed by the trial Court in Criminal Complaint No. 138-2 dated 03.05.2014 (Annexure P-1), vide which, while adjourning the case for 24.04.2015, it was ordered that it will be the last and final opportunity to lead defence evidence, failing which, the defence evidence shall be closed by order of the Court.

The brief facts of the case are that the petitioner was summoned to face a trial in the aforesaid complaint filed by respondent-complainant on account of dishonour of a cheque of Rs.15,00,000/-. Counsel for the petitioner has re-produced all the interim orders passed by the trial Court in the petition itself and submits that the complaint was filed on 03.05.2014 and thereafter, it was listed for preliminary evidence. Vide order dated 15.07.2014, the petitioner was summoned to face trial. It is further submitted that the petitioner was in judicial lock up in some other case and he appeared through his counsel to cross-examine the complainant witnesses. The statement of the petitioner-accused was recorded under

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Section 313 Cr.P.C. on 09.12.2014 and it was adjourned to 06.01.2015 for defence evidence and thereafter, the case was adjourned to 20.01.2015, 31.01.2015, 12.02.2015. Thereafter, on 24.02.2015, the complainant moved an application for exemption from appearance and the case was listed for 03.03.2015, 16.03.2015, 31.03.2015 and then for 10.04.2015, the impugned order (Annexure P-3) was passed.

Counsel for the petitioner further submits that a perusal of all the orders would show that petitioner -Subash Uppal was in judicial lock up in other case and as such, he was not in a position to produce his defence evidence because of his confinement in judicial lock up. Counsel for the petitioner further submits that this petition was filed as it was apparent from the impugned order that on the next date of hearing i.e. 24.04.2015, the evidence was to be closed by Court order.

Counsel for the petitioner has further submitted that the petitioner has now been granted bail in another case and if granted two effective opportunities, he will conclude his entire evidence.

Counsel for the petitioner has also submitted that right to lead defence evidence is an important right granted to an accused person to lead his defence evidence and prove his innocence in a criminal trial and on account of his confinement in judicial lock up, the petitioner could not bring his defence evidence and therefore, the impugned order vide which the Court has held that on the next date of hearing, the evidence will be closed by the Court order is liable to be set aside.

While issuing notice of motion on 18.05.2015, the following order was passed:-

> *"Learned counsel for the petitioner submits that the petitioner is in custody throughout. He further submits*

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that petitioner given only one week's time, the petitioner would conclude his evidence.

Notice of motion for 20.08.2015.

In the meanwhile, the trial Court will not pass the final order."

Since then, this petition is pending and the interim order is continue. It is worth noticing here that Mr. Vijaykaran Sandhu, Advocate has appeared on 29.09.2015 and thereafter, no one appeared on 18.02.2016, 08.09.2016, 16.01.2017, and on the last date of hearing i.e. 08.08.2017, for this reason, the case was adjourned and interim order was allowed to continue.

Even today, there is no representation on behalf of the respondent. Since the proceedings before the trial Court are stayed, the arguments of the counsel for the appellant was heard.

After hearing counsel for the petitioner and on perusal of the interim orders re-produced in the petition, it is apparent that since, the time the case was fixed for defence evidence, the petitioner-accused was continuously in judicial lock up in some other case. Therefore, considering the hardship faced by the petitioner, this petition is allowed and the trial Court is directed to grant two effective opportunities to the petitioner-accused to conclude his entire evidence. However, it is made clear that two opportunities will be granted on the own responsibility of the petitioner to produce his defence evidence.

With these observations, this petition stands disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

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Whether speaking/reasoned Yes / No
Whether reportable Yes / No