

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No.5057 of 2017

Date of decision: 27th April, 2017

Abhishek

... Petitioner

Versus

M/s J.M.D. Medical Agencies & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aditya Sanghi, Advocate
for the petitioner.

Mr. Gorav Kathuria, Advocate for respondent No.1.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.2/State.

FATEH DEEP SINGH, J.

In this petition preferred under Section 482 Cr.P.C. the accused petitioner Abhishek has sought prayer for setting aside the orders dated 05.08.2016 (Annexure P1) passed by Judicial Magistrate 1st Class, Faridabad whereby upon conclusion of the evidence of complainant the Court has failed to give opportunity to the accused petitioner to explain by way of statement under Section 313 Cr.P.C. the incriminating evidence, oral as well as documentary proved at the trial and has straightaway gone to record the defence evidence.

After hearing Mr. Aditya Sanghi, Advocate for the petitioner; Mr. Gorav Kathuria, Advocate for respondent No.1 and Mr. Munish Sharma, Asstt. Advocate General, Haryana representing the State and on perusal of the records.

A criminal complaint under Section 138 etc. of the Negotiable Instruments Act, 1881 was preferred by complainant M/s J.M.D. Medial Agencies against M/s H.S.Pharmaceuticals, its partners Amardeep Garg and present petitioner Abhishek regarding dispute over dishonour of the cheque. The records irrefutably establish and could not be displaced by any of the contesting sides that the evidence of the complainant was closed on 05.08.2016 and without putting the evidence so proved at the trial, oral as well as documentary, the case has been adjourned to 06.09.2016 for defence witnesses and arguments. The order is reproduced as below to lay emphasis:

*“Cross-examination of deferred CW-1 concluded.
Adjournment sought by learned defence counsel. Heard.
Now the case is adjourned to 06.09.2016 for DWs, if any
otherwise for arguments. DWs shall be produced at own
responsibility.*

*Sd/-
JMIC/.Fbd.05.08.2016”*

The provisions enshrined in the Code of Criminal Procedure have been enacted with a definite purpose so as to ensure fair trial and grant of reasonable opportunity with the underlying principle that no-one should be condemned unheard. Section 313 Cr.P.C. has been made with this end in view, by virtue of which a duty is cast upon the Court and get explanation of any incriminating material that has been proved against the accused at the trial which the accused needs to give explanation for. The provisions mandate that for the purposes of enabling the accused to personally explain any circumstances appearing in the evidence against

him at the inquiry or trial, the Court may at any stage without previously warning the accused put such questions to him as the Court may deem necessary and where the evidence of the complainant side has been examined before recording of his defence, the Court is supposed to do so and which is without administering oath to him. Thus, a very important segment of the trial is sought to be ignored by the learned Judicial Magistrate 1st Class and which has certainly gone to the roots of the case causing immense prejudice to the case of the petitioner.

Though this Court is of the view that provisions of Section 482 Cr.P.C. are to be sparingly used where ends of justice so demand and in the present case as is apparent the officer concerned has apparently remained in oblivion to this mandatory prerequisite of law and has gone about more concerned with the disposal of the matter rather than accomplishing the very spirit of dispensing justice in the right earnest. The impugned order from the very face of it is not only highly illegal and perverse and which could not be given shelter to by the respondent side and the counsel representing them with all fairness has conceded to this serious irregularity that has cropped up in the proceedings of the learned trial Court. Thus, in the light of what has been observed certainly impels this Court to exercise its powers under Section 482 Cr.P.C. and to undo the effects of this and in the interests of justice allow the present petition to the limited extent whereby the impugned order dated 05.08.2016 (Annexure P1) is hereby set aside and the matter is ordered to be remanded back to the learned trial Court to proceed ahead after the

closure of the complainant's evidence in accordance with the statutory provisions enshrined in the Code of Criminal Procedure and to dispose off the matter as per law. The parties are directed to appear before the trial Court.

Before parting, this Court deems it necessary to issue directions to the concerned Sessions Judge to ensure that the officers are well sensitized to such essential prerequisites of law else it would hamper due dispensation of justice.

The instant petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

April 27, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No