

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

**CRR-1668-2017 (O&M)
Date of decision: - 2.8.2017**

M/s O.K.Bricks Industry

.....Petitioner

versus

M/s Madhav Constructions and others

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - M/s Rakesh Dhiman and Tarunjit Singh Grewal, Advocates
for petitioner.

Mr. Rishi Pal Rana, Advocate for respondents.

ARVIND SINGH SANGWAN, J. (ORAL)

Present petition arises out of an order dated 31.1.2017 passed by Judicial Magistrate Ist Class, Jagadhri, District Yamuna Nagar, closing the evidence of the petitioner/complainant in a complaint case filed under Section 138 of the Negotiable Instruments Act 1881.

Learned counsel for petitioner/complainant, with reference to three orders passed by the trial Court, immediately before passing of the impugned order, has submitted that on 17.11.2016, the accused was not present in Court and on that date, only examination-in-chief of Parveen Kumar- petitioner/complainant was recorded and the case was deferred to 6.12.2016. On 6.12.2016, cross-examination of Parveen Kumar was again deferred on the request of learned counsel for the accused. The case was then adjourned to 20.12.2016 and on 20.12.2016, again the cross-examination of Parveen Kumar was deferred to 16.1.2017. On 16.1.2017, cross-examination of Parven Kumar was concluded and

the case was adjourned to 31.1.2017 for the remaining evidence of complainant.

Learned counsel for the petitioner further submits that while passing the impugned order dated 31.1.2017, trial Court has noticed that the accused was not present even on that date in the Court, and an application for exemption of his appearance was filed and the same was allowed. It is thus submitted that even if, the evidence of the petitioner was present on that date, the same could not be recorded, in the absence of the accused as on the previous dates when the statement of complainant-Parveen Kumar was recorded, a similar request was made by the co-accused that in the absence of the co-accused, cross-examination be deferred. It is thus submitted that evidence of petitioner/complainant-Parveen Kumar was wrongly closed by order of the Court.

Learned counsel for the petitioner-complainant further submits that he want to examine only two official witnesses from the Bank and undertakes that he will effect the service of both the witnesses by dasti process.

On the other hand, learned counsel for respondents submits that sufficient opportunities have been granted to the petitioner-complainant and petitioner has not shown any bona fide in not producing the entire evidence.

After hearing the learned counsels for the parties, I am of the opinion that the impugned order dated 31.1.2017, closing the evidence of the petitioner-complainant, on the date when the accused himself was not present is not justified and accordingly, the same is set aside. The trial Court is directed that the petitioner be afforded one effective opportunity to lead and conclude his entire evidence.

Parties are directed to appear before the trial Court on 5.8.2017, and date will be fixed by the trial Court for recording the evidence.

Disposed of as above.

(ARVIND SINGH SANGWAN)
JUDGE

2.8.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/Noo