

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc.No.M-23549 of 2016 (O&M)
Date of Decision : 18.07.2018

Sikanderjit Singh Bajwa

..... Petitioner

Versus

Kanwarbir Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Karanjit Singh, Advocate
for the petitioner.

Ms. Jasneet Mehra, Advocate
for the respondent.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for setting aside the order dated 31.10.2015 (Annexure P-3) passed by the Judicial Magistrate Ist Class, Amritsar vide which evidence of the petitioner-complainant was closed by order and for setting aside the order dated 18.04.2016 (Annexure P-5), passed by that Court, vide which the application under Section 311 Cr.P.C., filed by the petitioner was dismissed.

Undisputedly, the petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act (in short 'the Act') against respondent Kanwarbir Singh. The said complaint was fixed for petitioner's evidence for 31.10.2015 and on that day the evidence of the petitioner was closed by order while observing as under:-

*“In view of the contents made in the application,
personal appearance of complainant is exempted for today*

only.

No CW is present despite last opportunity. Again adjournment prayed. Perusal of the file reveals that the case is pending since 23/07/13 for after notice evidence of complainant but complainant failed to conclude it. As such, there is no justification to further adjourn the case for the same purpose and the after notice evidence of complainant is closed by order. Now, the case is adjourned to 04/11/15 for recording the statement of accused U/s 313 Cr.P.C.”

However, the petitioner moved an application (Annexure P-4) on 03.02.2016 to examine Harpal Singh son of Jagir Singh, Proprietor Narwant Trading Company, Mandi Bhagtanwala, Amritsar. The said application was contested and after hearing the learned counsel for the parties, the same was dismissed vide order dated 18.04.2016, passed by the learned Judicial Magistrate Ist Class, Amritsar, solely on the ground of delay while observing as under:-

“The Court vide order dated 31.10.2015 closed the evidence of complainant by order and thereafter the case was fixed for defence evidence of the accused. Now when the accused has examined two witnesses in his defence, allowing the present application would amount to allowing the complainant to fill up the lacunas in the evidence. Moreover, the complainant has failed to assign any reason as to why the present application has been moved at such a belated stage as the evidence of the complainant was closed on 31.10.2015 and the present application has been moved on 3.2.2016 i.e. after a gap of four months when the accused has already led his defence evidence. Thus, I do not find any justification to allow the present application and the same is hereby dismissed. However, anything observed above shall have no bearing on the final decision of the case on merits.”

I have heard learned counsel for the parties and have gone

through the record.

The said application was under Section 311 Cr.P.C. which provide ample powers to the Court to receive additional evidence during the course of trial which reads as under:-

“Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re- examine any person already examined; and the Court shall summon and examine or recall and re- examine any such person if his evidence appears to it to be essential to the just decision of the case. ”

Therefore, the instant petition stands allowed and the impugned orders dated 31.10.2015 (Annexure P-3) and 18.04.2016 (Annexure P-5) passed by the Judicial Magistrate Ist Class, Amritsar are set aside. The application under Section 311(Annexure P-4), filed by the complainant to examine Harpal Singh son of Jagir Singh stands allowed. Trial court is directed to summon the said witness and examine him and dispose of the complaint in an expeditious manner.

18.07.2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable :	Yes/No