

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

Decided on: 04.10.2018

1. CRM-M No.39856 of 2017

Ashwani Bhardwaj		Petitioner
	Versus	
Sohan Lal Singal		Respondent

2. CRM-M No.39858 of 2017

Ashwani Bhardwaj		Petitioner
	Versus	
Sandeep Kuamr Singal		Respondent

3. CRM-M No.39879 of 2017

Ashwani Bhardwaj		Petitioner
	Versus	
Dharuv Kumar Singal		Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Narinder Kumar Vadhera, Advocate
for the petitioner (in all the petitions)

Mr. A.K. Kalsy, Advocate
for the respondent (in all the petitions)

ARVIND SINGH SANGWAN, J.

By way of this order, I shall dispose of the aforesaid petitions as common questions of law and facts are involved for adjudication.

Prayer in all these petitions is for setting-aside the order dated 24.05.2017 (Annexure P1) passed by the trial Court vide which

the defence evidence of the petitioner was closed by Court order as well as the order dated 18.08.2017 (Annexure P3) passed by the Revisional Court, dismissing the revision filed by the petitioner.

Brief facts of the case are that the respondent/complainant has filed a complaint under Section 138 of the Negotiable Instruments Act (in short 'the N.I. Act') which is pending before the trial Court. After the complainant(s) have closed the evidence, the case was fixed for recording defence evidence of the petitioner/accused. The petitioner had summoned a Clerk from the office of the Deputy Commissioner, Ludhiana. Thereafter, the said witness appeared before the trial Court and he was bound down for the next date, however, having failed to appear, he was summoned for 24.05.2017 throughailable warrants. The said witness along with the record appeared before the trial Court on 24.05.2017 and on that day, on account of not recording the examination-in-chief, he was discharged and evidence of the petitioner was closed by Court order. Thereafter, the petitioner preferred a revision, which was dismissed by the Revisional Court observing that sufficient opportunity was granted and, therefore, despite availing 13 opportunities, the petitioner has failed to conclude his defence evidence.

Counsel for the petitioner has submitted that on the date, when the witness namely Prabhjot Singh, Clerk from the office of the Deputy Commissioner, Ludhiana was present, the petitioner's counsel could not appear before the trial Court for recording his examination-in-chief and, therefore, the trial Court without affording proper

opportunity has closed the evidence. It is further submitted that a perusal of the impugned order itself show that the petitioner was making serious efforts to summon the aforesaid witness as even on two previous dates, once the trial Court has bound him down for the next date of hearing and when he failed to appear, he was summoned through bailable warrants and, therefore, there was no intention on the part of the petitioner/accused not to complete his evidence.

Counsel for the petitioner has further argued that the Revisional Court has not properly appreciated the fact that right to lead defence evidence is an important right given to an accused person to prove his innocence and the evidence has been closed only on the ground that the petitioner, on an earlier occasion has availed number of opportunities.

In reply, counsel for the respondent/complainant has submitted that the petitioner being an accused is trying to take maximum time, to delay the decision of the case.

It is worth noticing here that on 26.10.2017, while issuing notice of motion, the trial Court was directed to adjourn the case beyond the date fixed.

After hearing the counsel for the parties, I find merit in the present petitions. Since the petitioner, who is an accused in the trial has a right to lead his defence evidence, I deem it appropriate to afford one effective opportunity to produce DW1, the concerned Clerk from the office of the Deputy Commissioner, Ludhiana. Accordingly, these petitions are allowed and the petitioner is granted one effective

opportunity to lead his defence evidence and examine the concerned Clerk from the office of the Deputy Commissioner, Ludhiana. This will, however, be subject to payment of costs of Rs.3,000/- each (in all the petitions) to be paid to the complainant.

It is made clear that the trial Court will fix a date in the case and thereafter, it being an old case, decide the same expeditiously preferably within a period of 03 months from the date of receipt of certified copy of this order.

(ARVIND SINGH SANGWAN)
JUDGE

04.10.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No