

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

CRM-M No.54058 of 2018 (O&M)

Date of Decision: 20.12.2018

Ashok Mittal

.....Petitioner

Versus

Ashima Anand

.....Respondent

CORAM : HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vivek Goyal, Advocate for the petitioner/accused.

Mr. J. S. Chandel, Advocate for the respondent/complainant.

MAHABIR SINGH SINDHU, J.

Present petition under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) has been filed praying for quashing of order dated 16.10.2018 (P-5), passed by learned Additional Sessions Judge, Chandigarh, whereby the Criminal Revision No.288 of 2018 of the petitioner has been dismissed and order dated 10.08.2018, passed by learned Judicial Magistrate 1st Class, Chandigarh, thereby closing defence evidence, has been affirmed.

Brief facts of the case are that respondent/claimant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'the Act'*) on account of dishonour of cheque. Learned trial Court summoned the petitioner and in pursuance thereof, he appeared and after obtaining the bail, choose to contest the complaint. After usual accusation, the evidence of the prosecution was closed on 27.02.2018 and thereafter, the entire incriminating material was

put before the petitioner on 08.03.2018 in terms of Section 313 Cr.P.C. and he claimed innocence. Also necessary to mention here that petitioner opted to lead evidence in his defence and that started on 15.03.2018, but till the passing of the impugned order, despite availing about eight opportunities, he failed to conclude his defence and that led to the passing of the impugned order. Hence, the present petition.

It is contended by learned Counsel for the petitioner that perusal of the impugned order reveals that on the same very day, learned trial Court accepted the application of the petitioner for granting exemption from his personal appearance and at the same time, closed his evidence for defence and that approach of learned trial Court is absolutely unsustainable in the eyes of law. Also argued that the petitioner has not been afforded sufficient opportunity to plead his innocence.

On the other hand, learned Counsel for the respondent/complainant has opposed the prayer made on behalf of the petitioner and submitted that he has already availed about eight effective opportunities and unnecessary prolonging the matter before learned trial Court and thus, the impugned order does not require any interference by this Court.

Heard learned Counsel for the parties and perused the paper-book.

Perusal of the paper-book reveals that petitioner has been afforded more than the sufficient opportunities to conclude his defence evidence before learned trial Court and which is apparently clear from the *zimni* orders right from recording of the statement under Section 313 Cr.P.C. on 08.03.2018 and the same are reproduced as under:-

Present: Advocate Sh. Ramesh Kumar, counsel for complainant.

Accused on bail with Advocate Sh. Deepak Arora.

Statement of accused has been recorded under Section 313 Cr.P.C. Whereby he opted to lead evidence. As such for defence evidence, if any and arguments file be put up on 15.03.2018. Accused as liberty to file the witness list if, required or wanted to examine the any witness.

*Baljinder Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 08.03.2018*

Present: Advocate Sh. Ramesh Kumar, counsel for complainant.

Accused on bail with Advocate Sh. Deepak Arora.

No DW is present. On request of learned counsel for accused, case is adjourned to 22.03.2018 for entire Dws to be produced at own responsibility as well as for arguments.

*Baljinder Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 15.03.2018*

Present: Advocate Sh. Ramesh Kumar, counsel for complainant.

Accused on bail with Advocate Sh. Deepak Arora.

Today, the case was fixed for defence counsel. Accused appeared in the Court, requested for adjournment of this case.

Report of ahlmad perused. As per report of Ahlmad diet money of the witnesses was deposited on 21.03.2018 so Ahlmad has not issued the summons to the witnesses. Ahlmad is directed to send the summons to the witnesses and accused is at liberty to conclude the summons.

On request of learned counsel for accused, case is adjourned to 11.04.2018 for entire Dws to be produced at own responsibility as well as for arguments.

*Baljinder Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh
Date of Order : 22.03.2018*

Present: Advocate Sh. Ramesh Kumar, counsel for complainant.

Accused on bail with Advocate Sh. Deepak Arora.

Today, the case was fixed for Dws and arguments. Statement of Sh. Gaurav Kumar, Clerk, UBI, Sec.8-C, Chandigarh, suffered a separate statement they are not having any running account in the Ashwani Anand. He has not brought record related to Ashima Anand as no summons was record for that.

Witness namely Jasmer Singh, Clerk, UBI, Manimajra, Chandigarh, suffered a separate statement in the absence of account number they are not able to provide any record.

Learned counsel for accused is directed to provide the detail of the record to the witnesses. Hence, They are discharge for today and bound down for the next date with the direction to produce the record. Now, case is adjourned to 19.04.2018 for entire Dws to be produced at own responsibility as well as for arguments.

*Baljinder Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 11.04.2018*

Present: Counsel for the parties.

File put up before me in compliance of order Endst. No.DSJ-EC2018/46008, dated 19.04.2018 passed by Learned Distt. & Sessions Judge, Chandigarh, as Ms.Baljinder Kaur, Learned Judicial Magistrate 1st Class, Chandigarh is on medical leave w.e.f. 18.04.2018 to 02.05.2018. Now, case is adjourned to 07.05.2018 for the purpose already fixed. File be sent back to the concerned court forthwith.

*Judicial Magistrate 1st Class (Duty)
Chandigarh/19.04.2018*

Present: Sh. Ashwani Anand, SPA of complainant in person with

Advocate Sh. Ramesh Kumar Bamal.

Accused on bail with Advocate Sh. Deepak Arora.

Today, the case was fixed for defence evidence as well as for arguments.

In pursuance of the notice to the witnesses as per the list of witnesses, 8 witnesses appeared. Out of the 8 witnesses, 2 witnesses namely R.C.Taneja Notary Distt. Court, Panchkula and Authorized Officer, Tehsildar Office, Mini Secretariat, Sec.1, Panchkula, stated that they have not been informed about the detailed particulars of the documents sought to be produced. In the absence of any details particulars they are not able to provide the details of the record.

Learned counsel for the accused is directed to provide the details of the record to the witnesses sought to be summoned. Now, case is adjourned to 16.05.2018 for entire Dws to be produced at own responsibility as well as for arguments. Hence, they are discharged for today and bound down for the next date.

*Navneet Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 07.05.2018*

*Present: Sh. Ashwani Anand, SPA of complainant in person with
Advocate Sh. Ramesh Kumar Bamal.
Accused on bail with Advocate Sh. Deepak Arora.*

Today, the case was fixed for defence evidence as well as for arguments.

DW-1 to DW-6 are present and examined. No other DW is present. On request of learned defence counsel, case is adjourned to 25.05.2018 for remaining Dws , if any otherwise for arguments.

*Navneet Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 16.05.2018*

*Present: Sh. Ashwani Anand, SPA of complainant in person with
Advocate Sh. Ramesh Kumar Bamal.
Accused on bail with Advocate Sh. Deepak Arora.*

Today, the case was fixed for defence evidence as well as for arguments.

No DW is present, Learned counsel for the accused prayed for adjournment. Heard. Keeping in view the facts and circumstances and interest of justice, adjournment prayed is allowed, now case is

adjourned to 07.06.2018 for entire Dws to be produced at own responsibility as well as for arguments. Remaining Dws be also summoned for the date fixed.

*Navneet Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 25.05.2018*

Present: Counsel for the parties.

File put up before me being Duty Magistrate as the Ld. Presiding Officer Ms. Navneet Kaur, JMIC, Chandigarh is on leave today, Now, case is adjourned for the purpose already fixed and date is mentioned by Reader in business . Parties/counsels be informed accordingly.

*Duty Magistrate/JMIC
Chandigarh,07.06.2018*

*Present: Advocate Sh.Ramesh Kumar Bamal, counsel for complainant.
Advocate Sh. Deepak Arora, counsel for accused.*

Accused not present. Exemption application from personal appearance on behalf of accused has been filed through counsel. The same is considered and allowed for today only in view of the grounds mentioned therein.

Today, the case was fixed for defence evidence. DW-6 Ms. Sonia Assistant Manager, UBI, Manimajra & DW-7 Bupesh Chaudhary present and examined. The defence has examined 7 witnesses out of 29 witnesses. At Serial No. 10, 13, 14, 21, 22, 23, & 29 have been examined till date. The exact details of the rest of the witness has not been mentioned in the list of witnesses given by the defence counsel. The learned defence counsel is directed to furnish the exact particulars of the documents sought to be produced by such witnesses on the next date. Now, case is adjourned to 26.07.2018 for entire Dws to be produced at own responsibility as well as for arguments.

*Navneet Kaur, PCS
Judicial Magistrate Ist Class,
Chandigarh.
Date of Order : 11.07.2018*

Present: Complainant with his counsel Sh. Ramesh Kumar.

Accused on bail with Advocate Sh. Deepak Arora.

Complaint received by way of transfer. It be checked and registered. Today, case was fixed for Dws. Ld. Counsel for accused moved an application for exemption of accused. In view of facts mentioned in the application the same is allowed for today only. Counsel for accused also requested for an adjournment for defence evidence. In view of his request case is adjourned to 10.08.2018 for DWs. Subject to last opportunity.

*Suman Patlain
JMIC/Chd/26.07.2018*

Present: Complainant with his counsel Sh. Ramesh Kumar.

Accused on bail with Advocate Sh. Deepak Arora.

Complaint received by way of transfer. It be checked and registered. Today, case was fixed for Dws. Ld. Counsel for accused moved an application for exemption of accused Ashok Mittal. In view of facts mentioned in the application the same is allowed for today only. Despite several opportunities counsel for accused did not close his evidence. So the evidence of accused is hereby closed by Court orders. Now, case is adjourned to 20.08.2018 for arguments.

*Suman Patlain
JMIC/Chd/10.08.2018*

Record reveals that six DWs were examined on 16.05.2018. Thereafter, on 25.05.2018, case was adjourned with a direction to conclude the entire DWs at his own responsibility. Only one DW was examined on 11.07.2018 despite the fact that he was directed to conclude entire defence evidence on the date fixed and thereafter, not even a single witness has been examined till the passing of the impugned order for the reasons best known to him.

On 26.07.2018, when the case was fixed for defence evidence, an application was moved for personal exemption of the petitioner, which was allowed by learned trial Court and case was adjourned to 10.08.2018 for DWs subject to last opportunity. Again on 10.08.2018, an application for exemption from personal appearance of the petitioner was moved and that was accepted and on that day, evidence of the petitioner was closed by Court order. Therefore, the argument that exemption application of the petitioner was accepted and on the same day, the defence evidence has also been closed does not merit acceptance in view of the fact that on earlier occasion also, the petitioner adopted the same practice and did not conclude his evidence despite availing benefit of exemption from personal appearance. Therefore, it seems that learned trial Court has shown the utmost leniency in favour of the petitioner, but he is just adopting the delaying tactics on one pretext or the other.

Learned revisional Court has also observed that costs were imposed upon the petitioner for not concluding the cross-examination of the prosecution witnesses as he availed about 29 opportunities, but still, the trial was delayed for one reason or the other. Since the evidence of the prosecution was closed wayback on 27.02.2018 and statement under Section 313 Cr.P.C. was recorded on 08.03.2018 and since then, the case is pending for conclusion of the defence evidence, therefore, no reason was found by revisional Court to grant any further opportunity to lead any other evidence as the petitioner has already been granted sufficient number of opportunities to conclude evidence in his defence.

Paper-book reveals that petitioner has availed 29 opportunities for cross-examination of the complainant witnesses and more than 08 opportunities for defence evidence, but still, complaining that he has not been granted

sufficient opportunities, which is totally baseless.

It is also an admitted fact that 07 defence witnesses have already been examined by the petitioner and, therefore, learned trial Court was more than magnanimous while granting the relief of exemption from personal appearance to the petitioner, but he is trying to take the benefit of his own wrong. Merely that learned trial Court has granted the benefit of personal exemption, the petitioner should not be granted a premium for prolonging the litigation to endless. Moreover, learned trial Court has categorically asked him as to what is the purpose for examination of the remaining witnesses, but the petitioner did not bother to respond and he simply delaying the conclusion of the proceedings on lame excuses. No doubt, the petitioner being the accused has a right of defence, but at the same time, it does not mean that he has a licence to harass the respondent/complainant and to put a clog on the nerve of the Court proceedings while dragging the same to indefinite period. Present is the case relating to the complaint under Section 138 of the Act regarding the dishonour of cheque, but the petitioner has left no stone to be unturned by converting the same greater than a regular criminal trial and that cannot be countenanced keeping in view the object of the Act. Thus, the course adopted by the petitioner is absolutely misuse of the process of the Court proceedings and that should be discouraged.

In view of aforesaid facts and circumstances, discussed hereinabove, the present petition is dismissed being devoid of any merit with costs of ₹ 10,000/- to be paid to the High Court Legal Services Committee within four weeks. In case, aforesaid amount is not paid, then Registry is directed to put up the case for hearing on 17.01.2019.

Learned trial Court is requested to conclude the trial expeditiously.

The observations made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

December 20, 2018

Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>