

**In The High Court for the States of Punjab And Haryana
At Chandigarh**

CRM-M-1598-2019 (O&M)
Date of Decision:-16.1.2019

Satinderpal Singh @ Satwinder Singh ... Petitioner

Versus

Kanwaljit Singh ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Aayush Gupta, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioner assails order dated 18.1.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the cross-examination of the complainant has been ordered to be treated as 'NIL' since despite several opportunities having been afforded to the petitioner, the complainant was not cross-examined.

The petitioner also assails order dated 1.11.2018 (Annexure P-4) passed by learned Additional Sessions Judge, Ludhiana whereby a criminal revision petition filed by the petitioner challenging order dated 18.1.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Ludhiana, has been dismissed.

I have heard the learned counsel for the petitioner.

The petitioner has been facing trial in respect of an offence under Section 138 of Negotiable Instruments Act, wherein the complaint was filed way back in the year 2014. A perusal of the zimni orders annexed

with the petition as Annexure P-2 indicates that the matter was adjourned several times for the purpose of cross-examination of the complainant. Although some of the adjournments can be attributed to the complainant but majority of the same are attributable to the petitioner/accused himself. So much so, when the trial Court passed the impugned order, ordering the cross-examination of the complainant to be treated as 'NIL', the petitioner's counsel before the trial Court had been informed several times but he kept on dilly dallying the matter. The relevant extract from the impugned order dated 18.1.2018 reads as follows:-

“Today the case was fixed for cross-examination of the complainant, however, the accused failed to bring his counsel for cross-examining the witness. It is pertinent to mention here that on 22.11.2017, the case was fixed for cross-examination of the complainant, however, the accused, did not appear on that date and the case was adjourned for 01.12.2017 i.e. for the last date of hearing for cross-examination of the complainant by exempting the personal presence of accused. On the last date of hearing, the case was called for several times. Accused appeared but his counsel only appeared after lunch and requested for adjournment. He further stated that he will cross-examine the witness on the next date of hearing at 12:00 Noon. Request of the counsel for the accused was accepted and the case was adjourned for today for cross-examination of the complainant at 12:00 Noon. Today the case was called by this Court at fixed time. Accused appeared but his counsel did not appear. Accused requested that his counsel is coming in 20 minutes. Case was again called after twenty minutes, but again the counsel for the accused did not appear and the accused also went away to call him. At about 12:40 P.M. case was again called, however, this time also the accused appeared but his counsel did not appear. Finally the accused was warned by the court and the case was put for hearing after lunch by directing the accused to bring his counsel after lunch. After lunch case was again called for several times but the situation remains the same.

Every time the accused was telling the court that his counsel is appearing in 10 minutes or in 20 minutes, but his counsel did not appear. The case was adjourned for today by this court from the last date of hearing at the request of defence counsel and the time was also fixed for the cross-examination of the witness as per convenience of defence counsel. Even after that, despite the case being called for so many times, the accused failed to call his counsel to cross-examine the complainant. It is 3:45 PM and the court time is likely to be over now. No further wait is justified. This court is of the view that the defence is only causing intentional delay in the proceedings of the case. In these circumstances, no further opportunity to the defence is justified. Hence, the cross-examination of the complainant is ordered as 'NIL' (opportunity given). Learned counsel for the complainant vide his separate statement to that effect closed after notice evidence on behalf of complainant.

Now to come up on 09.02.2018 for recording statement of accused under Section 313 of Code of Criminal Procedure.”

From the above referred factual position, especially that several opportunities have already been afforded to the petitioner and that the matter has been pending since the year 2014 and that no justifiable reason is forthcoming to justify or to warrant interference with the impugned order, this Court does not find any infirmity in the same and the same is hereby upheld. There is no merit in this petition and the same is hereby dismissed.

16.1.2019

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No