

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10473-2019 (O&M)

Date of decision: 08.03.2019

Sanjay Saxena

....Petitioner

Versus

Manish Gupta

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Asghar Khan, Advocate,
Mr. Akshit Gadhok, Advocate,
Mr. Abdul Tahir Khan, Advocate,
Mr. Mohd. Shoaib, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 17.10.2018 (Annexure P-4) passed by the trial Court, vide which application for discharge filed by the petitioner in criminal complaint No.CIS/2579/2016 dated 24.02.2016, titled as Manish Gupta Vs. Sanjay Saxena, was dismissed as well as the order dated 14.02.2019, vide which the revisional Court dismissed the revision petition, challenging the aforesaid order.

Brief facts of the case are that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') on account of dishonouring of a cheque of Rs.50.00 lacs.

It is worth noticing here that the petitioner had filed CRM-M-18995 & 18996-2018 praying for quashing of two similar criminal complaints including present complaint No.CIS/2579/2016 dated 24.02.2016, titled as Manish Gupta Vs. Sanjay Saxena as well as the summoning order dated 16.03.2016 and on 23.05.2018, the same were withdrawn with liberty to file an application for discharge before the trial Court and in the meantime, the petitioner was granted exemption from personal appearance subject to the conditions laid down in the said order. Thereafter, the petitioner filed an application for discharge before the trial Court and the trial Court, vide a detailed order dated 17.10.2018 (Annexure P-4), dismissed the same, holding that the case is at the stage of recording the defence evidence and the petitioner has failed to make out any ground for discharging him. It was further observed that nothing has come on record that the accused had no dealing with the complainant and therefore, all the points raised by the petitioner, in the application for discharge, can only be appreciated, after he lead his defence evidence.

The petitioner, thereafter, preferred a revision petition before the Court of Sessions and the revisional Court, vide impugned order dated 14.02.2019, recorded the following findings: -

“On the contrary, fully knowing the legal position, the revision has been filed just to delay the decision of the case as there was no bar on the petitioner-accused to lead his defence evidence and to put forward his defence story and get the issue adjudicated on merits. But he opted all dilatory tactics to gain time, as he has been seeking exemption and remaining absent

but forcing the complainant to appear on each and every date of hearing without there being any proceedings.

In this regard, the records shows that the present complaint was filed in the month of February, 2016 and petitioner-accused was summoned to face the inquiry vide order dated 16.03.16 but he did not appear in person despite due notice and sought exemption from personal appearance without getting himself bailed out. Ultimately he appeared on 25.10.16, when arrest warrant were issue against him and bailed out. Therefore he started moving applications for exemption from personal appearance, which was allowed by the trial court but when he started misusing this benefit, his bail was cancelled on two occasions but on appearance he was granted fresh bail and thus he was succeeded in delaying the case till 04.05.17, when notice of accusation was served upon him and inquiry was started on merits.

Thereafter he took four dated to cross examined the complainant as CW-1, Manish Gupta from 04.05.17 to 06.07.17 and during this his personal appearance was also exempted on some occasions. On 18.07.17, the complainant closed his evidence but the petitioner-accused moved an application for recalling CW-1 for further cross examination, which was dismissed vide order dated 05.09.17 along with his application for permanent exemption, although he continue to seek exemption on date to date basis. Somehow the statement of petitioner-accused under section 313 Cr.P.C. was recorded on 19.09.17 and in reply to the allegations, petitioner-accused put forwarded a defence that he has been falsely implicated and the cheque in question has been obtained in some bail matter case at Delhi and nothing is payable and he will prove his defence plea with evidence.

Obviously after that he was at liberty to lead his defence

evidence and he accordingly moved an application under section 315 Cr.P.C. to appear his own witness in defence which was allowed vide order dated, 24.10.2017. However, despite this the petitioner failed to appear as his own witness or lead any other defence evidence despite taking four/five adjournments and continued to move applications of exemption of personal appearance continuously from 07.11.2017 to 25.01.2018. In the meanwhile a revision filed by the petitioner-accused declining him the further opportunity of cross-examination the complainant was allowed vide order dated 18.01.2018 and accordingly the case was adjourned to 05.02.2018 for the presence of the petitioner-accused, who was again not present. On 05.02.2018 some new advocate appeared on behalf of the petitioner-accused, as such, the case was adjourned after lunch but after lunch again the complainant was not further cross-examined. On the contrary an application under Section 340 Cr.P.C. was filed and when the Trial Magistrate refused to give adjournment the complainant was cross-examined partly and his further cross-examination was deferred.

On the next date again complainant was not cross-examined further as some documents sought from him were not shown and one more opportunity was granted to the petitioner-accused to cross-examine on 20.02.18, which was the date of the choice of the petitioner-accused but on that day again petitioner-accused was not present and his personal appearance was exempted but complainant was further cross-examined partly and it was deferred for 06.03.2018. On 06.03.2018 also the petitioner-accused was not present and his personal appearance was exempted but his counsel cross-examined the complainant for some time and then the case was

adjourned to 31.03.2018. It is strange that despite orders of learned Revisional Court granting only one opportunity to further cross-examination, the petitioner-accused extended the same for more than four times and failed to compete it and thus the learned trial court refused to grant further opportunity and rightly did do and posted the matter for further proceeding.

On the next date of hearing complainant was not present and after allowing his exemption the case was adjourned to 10.04.2018. On 10.04.2018 petitioner-accused was not present and his personal appearance was exempted and the matter was adjourned to 19.04.2018 for tendering documents. On 19.04.2018 the complainant tendered his documentary evidence but again an application under Section 311 of Cr.P.C. was moved by the counsel for the petitioner-accused obviously with an intention to delay the matter and the Trial Magistrate adjourned the case to 26.04.2018. On 26.04.2018 the counsel for the petitioner withdrew the application under Section 311 of Cr.P.C. filed earlier but moved another application under section 311 for summoning one witness and to recall complainant for further cross-examination and obviously the matter was adjourned to 18.05.2018 and then to 25.05.2018, then to 31.05.2018, then to 01.06.2018. On 01.06.2018, the application under Section 311 of the Cr.P.C. was dismissed.

After that on the next date of hearing the petitioner-accused again moved an application for his permanent exemption. The Trial Court also imposed some cost while dismissing the application under Section 311 of the Cr.P.C. But the cost was not paid by the petitioner-accused. In between the petitioner-accused has filed this application for his discharge. But thereafter he continued to remain absent and even the conditions of exemptions were violated. After that a court

notice was issued to the petitioner-accused to appear in person but he failed to appear and his counsel used to take adjournments on one ground or the other. Ultimately, the Trial Court dismissed the application for discharge as per the impugned order dated 17.10.2018.

Thus from the above discussed history of the proceedings of the complaint, it is clear that from 19.09.2017 when the statement of the petitioner-accused was recorded till 17.10.2018, the matter was delayed by the petitioner-accused by moving one application after the other and even after dismissal of his application for discharge now he has moved another application under Section 311 Cr.P.C. to recall the complainant for further cross-examination which has been dismissed on 14.11.2018. Then it is a fact that despite granting him opportunity to appear as his own witness, the petitioner-accused failed to get himself examined till date. Rather, he moved a fresh application under Section 315 Cr.P.C. Even after that the petitioner-accused moved another application to summon some Chartered Accountant of the respondent-complainant in defence which was also allowed. During the pendency of this revision the Trial Court was directed to complete the proceedings fixed for 08.02.2019 but as is clear from the records again no evidence was led by the petitioner-accused.

As such, this court fails to understand how the petitioner-accused is seeking his discharge in this revision also when he is already having an opportunity to argue the matter on merits after adducing his defence evidence especially when the entire contentions put forward are based on defence evidence and cannot be considered on the pleadings itself. Thus the act and conduct of the petitioner-accused is not only mala fide but also gives clear indications

that his only intention is to delay the case on one pretext or the other and this revision is also an attempt in this regard. As such, on this ground also the revision is liable to be dismissed.

No other point has been urged or survives for consideration.

As a sequel to above discussion, the revision is proved to be without any substance and merits, thus stands dismissed. Let a copy of this judgment along with trial court record be also sent back with direction to the parties to appear there on the date fixed for further proceedings. Since the matter is already delayed a lot, the petitioner-accused shall get himself examined as his own defence witness as per the permission already granted to him if he so desire and thereafter the trial court shall grant him another opportunity of 15 days and on the adjourned date, if the petitioner-accused shall not conclude his evidence, it shall stand closed automatically and thereafter after hearing arguments within next seven days, final order shall be pronounced as the case in hand is an old case of Action plan, 2018-19. And this time schedule shall be maintained by the parties as well as trial court without any lapse. Needless to say, anything stated in this order shall not be misconstrued as an expression of opinion on the merits of the case. Revision file be consigned to the record-room after due compliance.”

Learned counsel for the petitioner has raised only one argument that on the date, when the impugned order was passed, he was not present and therefore, the matter be remanded back to the Court of Sessions.

After hearing learned counsel for the petitioner, I find no ground to interfere in the findings recorded by both the Courts below that

the petitioner has failed to make out any ground for discharge.

As noticed by both the Courts below, the petitioner is seeking discharge that he has no dealing with the complainant, though he has issued the cheques, which were in fact security cheques, can only be decided after the petitioner lead his defence evidence.

Even otherwise, it is noticed by the revisional Court that on various dates, the petitioner was seeking dates just to prolong and delay the decision of the case and he is not leading defence evidence. It is also noticed that the complaint is pending since February, 2016 and statement of the petitioner-accused under Section 313 Cr.P.C. was recorded on 19.09.2017 and now the case is fixed for defence evidence, when the petitioner has moved an application for discharge, though despite availing number of adjournments, he has failed to produce his defence evidence.

A perusal of the impugned order passed by the revisional Court shows that the petitioner is delaying the proceedings before the trial Court by moving various applications and therefore, the non-appearance of the petitioner before the Additional Sessions Judge is an another novel mode adopted by him to get the order set aside so that the matter may be remanded back and the petitioner may gain more time, however, the conduct of the petitioner, in unnecessarily delaying the Court proceedings, by adopting the delaying tactics, is not appreciated by this Court.

Considering the fact that the case is now fixed for defence evidence, as the statement under Section 313 Cr.P.C. was recorded way back in September, 2017 and the petitioner, despite availing number of

opportunities, has not concluded his defence evidence, in which he can prove that he has no liability towards complainant qua the cheque, I find no ground to interfere in the impugned orders passed by both the Courts below.

Dismissed.

In view of the fact that the complaint is pending since 2016 and proceedings are being delayed by the accused, the trial Court is directed to conclude the trial preferably within a period of four months from today.

[ARVIND SINGH SANGWAN]
JUDGE

08.03.2019
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No