

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

CRM-M-5866-2014 (O&M)
Date of Decision:-4.4.2019

Jai Parkash Singh

... Petitioner

Versus

Rajiv Kumar Gupta

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Jasdeep Singh Gill, Advocate
for the petitioner.

None for the respondent.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 7.11.2013 passed by learned Sessions Judge, Gurdaspur whereby his revision challenging order dated 5.6.2013 passed by Judicial Magistrate Ist Class, Batala had been dismissed.
2. A few facts necessary to notice for disposal of this petition are that respondent-petitioner/Rajiv Kumar Gupta had instituted a complaint dated 11.01.2002 (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner and his wife Mrs. Chinta Singh alleging therein that the accused had borrowed a

sum of ₹3.5 Lakhs and had issued a cheque dated 28.9.2001 for an amount of ₹3.50 Lakhs in discharge of the said liability but upon presentation of the same, the same was dishonoured leading to filing of the complaint by the respondent/complainant.

3. It is a case where even after closure of evidence of the complainant in the year 2003, the matter has remained pending for almost 15 years till date out of which it remained at the stage of recording of defence evidence for almost a decade and thereafter has been pending for about 5 years in this Court wherein the petitioner challenged the orders vide which his evidence was closed by order by the learned trial Court.
4. Some of the relevant dates in chronological order are as follows:-

12.01.2002	Complaint under Section 138 Instituted by respondent/complainant-Rajiv Kumar Gupta.
17.05.2002	Notice of accusation was served upon the accused.
04.01.2003	The complainant closed his evidence.
01.02.2003	Statement of accused recorded in terms of Section 313 Cr.P.C.
February, 2003 to 05.06.2013	During this period of 10 years the matter was adjourned for as many as '57 times' for the purpose of recording defence evidence but the accused did not conclude his evidence and ultimately his evidence was closed by order by learned Judicial Magistrate Ist Class, Batala vide order dated 5.6.2013

5. It may here be mentioned that in fact the evidence of the petitioner had earlier also been closed by order vide order dated 25.02.2011 but the said order was later on set aside by this Court while granting

one more opportunity to the accused to lead his evidence. During the aforesaid period of pendency of trial the presence of the accused was exempted on about forty occasions. On three of the occasions he had absented and his bail had been cancelled but was later on granted bail. On one of the occasions, he had been granted interim bail subject to the condition that he would argue the matter on the next date but the matter was not argued as during the pendency of the bail application the petitioner had filed a revision petition before the Court of Sessions and a plea was raised before trial Court that he would argue after the decision of the revision petition.

6. The learned trial Court while noticing the fact that the matter had been grossly delayed and had been adjourned several times at the instance of the accused, closed defence evidence of the accused by order on 5.6.2013. The revision petition filed by the accused challenging order dated 5.6.2013 was also dismissed while noticing the conduct of the petitioner.
7. The learned counsel for the petitioner assails the order passed by the trial Court closing his evidence by order on the ground that the delay in fact is attributable to the complainant himself, who despite having been directed by this Court vide order dated 24.09.2008 to appear before the trial Court on 15.10.2008 had not appeared and it was thus on account of his non-cooperation, the trial has been lingering on.

8. I have considered the aforesaid submission and have also perused order dated 24.09.2008 (Annexure P-2) passed by this Court while deciding CRR-627-2007 and have also perused order dated 3.5.2010 passed by this Court in an application filed subsequently in the aforesaid revision petition.
9. During the course of proceedings of the trial, the accused had produced an audio recording claiming the same to be of the complainant wherein complainant had allegedly admitted that the complaint was false. When the contents of the said audio cassette were put to Sh. Deep Kumar Gupta, father of the complainant who was present in the Court, he took a stand that the voice was not of the complainant Rajiv Kumar Gupta. Consequently, the trial Court vide order dated 3.10.2005 directed the power of attorney of the complainant to produce the complainant Rajiv Kumar Gupta on the next date so as to either admit or deny his voice in the said recording. However, subsequently an application was filed by Sh. Deep Kumar Gupta that the audio recording is required to be heard in a noise-free atmosphere so that a definite opinion could be given in respect of the same. The said application was allowed by the trial Court vide order dated 11.10.2006, which was challenged by the accused by way of filing CRR-627-2007 in this Court.
10. This Court while accepting revision petition vide order dated 24.9.2008 (Annexure P-2) set aside order dated 11.10.2006. The operative portion of the order dated 24.9.2008 reads as follows:-

“The trial Court is required to take notice of the conduct of the complainant also and pass appropriate orders in case the complainant does not put in appearance, as required. The complainant would put in appearance before the trial Court on 15.10.2008, for further proceedings, as are required to continue under order dated 3.10.2005. The service of this Court on the counsel for the complainant in the trial Court would be sufficient service on the respondent-complainant.”

11. However, it appears that the complainant did not appear before the trial Court and subsequently the petitioner/accused moved an application in the aforesaid revision petition bringing the aforesaid fact to the notice of the Court wherein notice was issued on 3.5.2010 to the Presiding Officer of the trial Court asking him to furnish his comments. However, no further order in this regard has been placed on record by learned counsel for the petitioner, but it has been orally informed that the matter was disposed of by issuing some advisory to the Presiding Officer.
12. The learned counsel for the petitioner, while referring to the aforesaid order dated 24.9.2008, has vehemently argued that since it is the complainant who has been non-cooperative and has apparently avoided to make any statement qua voice recording, since in case it is established that the voice in recording is of complainant, the complainant's case would fall to ground in view of his admissions made therein, therefore, the trial Court was not justified in closing the evidence of the accused by order and that the petitioner deserves

to be afforded one more opportunity to lead his evidence. Learned counsel in this context has further submitted that he had also got the voice recording examined from a private expert since the FSL had refused to examine the same due to paucity of time and had informed him that it would take at least one years' time for examining the same.

13. There is no representation on behalf of the respondent.
14. Having perused the record of the case and having considered contentions addressed before this Court, it goes without saying that conclusion of trial has been inordinately delayed. Although it is correct that the complainant, despite having been directed by this Court did not appear before the trial Court but still the period of a decade for which the matter remained pending for the purpose of recording defence evidence would not be justified and said delay cannot be totally attributed to the complainant. The conduct of the accused in seeking phenomenal '57 adjournments' during the period of one decade can hardly be appreciated. Similarly this Court is also unable to appreciate the conduct of the complainant who did not chose to appear before trial Court despite having been specifically directed by this Court for the purpose of admitting or denying voice recording vide order dated 24.09.2008 (Annexure P-2).
15. In any case, bearing in mind the facts and circumstances of the case especially that a large number of opportunities had been afforded to accused by the trial Court, this Court does not find any ground to set

aside order dated 5.6.2013 or dated 7.11.2013 whereby order dated 5.6.2013 was confirmed. There is no merit in this revision petition and the same is hereby dismissed. However, the trial Court is directed to take effective steps for concluding trial expeditiously preferably within a period of 3 months from today. The trial Court would be at liberty to bear in mind the conduct of the complainant in not appearing before the trial Court despite having been specifically directed by this Court vide order dated 24.09.2008 in context of the totality of the facts and circumstances. The petition stands dismissed accordingly.

(GURVINDER SINGH GILL)
JUDGE

4.4.2019
Gaurav Sorot

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