

In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-49001 of 2018

Date of Decision: 11.09.2019

Rajbir Singh

... Petitioner(s)

Versus

Mayur Chaudhary

... Respondent(s)

CORAM: Hon'ble Mr. Justice Shekher Dhawan.

Present: Mr. Munish Behl, Advocate
for the petitioner(s).

Mr. Akash Vashisth, Advocate
for the respondent.

Shekher Dhawan, J.

Present petition under Section 482 Cr.P.C. for quashing of order dated 06.07.2018 (Annexure P2), passed by the learned Judicial Magistrate Ist Class, Faridabad in criminal complaint bearing No. NACT-4468/2016 dated 04.11.2016/05.11.2016 titled as “Mayur Chaudhary v. Rajbir Singh” under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”) read with Section 420 IPC, whereby opportunity to cross-examine the complainant/respondent was closed. Petitioner has also challenged the order dated 16.10.2018 (Annexure P4), passed by the learned Additional Sessions Judge, Faridabad, whereby revision petition, filed by the petitioner against the order dated 06.07.2018, was also dismissed.

Learned counsel for the petitioner contended that petitioner was not given any opportunity to cross-examine the material witness of the case

ie. complainant/respondent. In fact, petitioner had earlier moved an

application under Section 145(2) of the Act to cross-examine the complainant/respondent, which was allowed by the learned Judicial Magistrate Ist Class, Faridabad vide order dated 06.02.2018. Thereafter, the matter was posted for hearing on 17.04.2018 for the cross-examination of the complainant/respondent. However, on 17.04.2018, cross-examination of the complainant could not be done as adjournment was sought by learned counsel for the complainant and as such, the matter was adjourned to 22.05.2018. On 22.05.2018 as well, cross-examination of the complainant/respondent could not be done and an application was filed by the petitioner/accused for seeking his exemption from personal appearance and the same was allowed by the learned trial Court. The matter was then posted for hearing on 07.06.2018.

Learned counsel for the petitioner further contended that petitioner/accused was in custody in some other case and on 07.06.2018, his production warrants were issued. Learned counsel further contended that on 06.07.2018, petitioner was present, however, an adjournment was sought by his learned counsel, but the learned trial Judge declined his prayer for adjournment and also declined an opportunity to cross-examine the complainant/respondent. Learned counsel further contended that the said order is liable to be set aside and an opportunity be granted to the petitioner to cross-examine the complainant/respondent, who is the material witness.

Learned counsel for the respondent contended that petitioner was given more than reasonable opportunities to cross-examine the complainant, but he never completed the same and as such, the learned trial Judge declined the prayer for further adjournment and there are no grounds

for acceptance of the present petition.

Having considered the submissions made by learned counsel for the parties and appraisal of the record, there is no dispute about the factual position that case was repeatedly adjourned for conducting cross-examination of the complainant/respondent, but petitioner himself did not come forward to complete the cross-examination. In that process, the learned trial Judge has imposed costs of Rs.500/- upon the accused/petitioner. Plea was also raised that petitioner remained in custody. However, learned Additional Sessions Judge observed in his order dated 16.10.2018 (Annexure P4) that even that plea was factually incorrect because on 17.04.2018, petitioner was on bail and complainant was not cross-examined as the case was relating to liability on the basis of cheque and complaint was filed under Section 138 of the Act. The record established that the case was posted for hearing on 22.05.2018, 07.06.2018 and 06.07.2018, but petitioner failed to cross-examine the complainant/respondent and thereafter, the learned trial Judge passed the impugned order (Annexure P2). The learned Additional Sessions Judge has also observed in his order dated 16.10.2018 (Annexure P4) that after closing of cross-examination of the complainant, the case was adjourned to three different dates i.e. 31.07.2018, 05.09.2018 & 24.09.2018, but the costs imposed upon the accused/petitioner had not been paid, though petitioner was in custody. The learned Additional Sessions Judge observed in his order that the entire act and conduct of the accused/petitioner reflects that he was interested in prolonging the trial of the case based on a complaint under Section 138 of the Act.

any merits because petitioner has already been given more than due opportunities and petitioner himself had not come forward to cross-examine the complainant simply because of the reason that he wanted to delay trial of the case. Thus, there is absolutely no illegality in the impugned orders dated 06.07.2018 (Annexure P2), passed by the learned Judicial Magistrate Ist Class and as affirmed by the learned Additional Sessions Judge vide order 16.10.2018 (Annexure P4). As such, present petition stands dismissed.

(Shekher Dhawan)
Judge

September 11, 2019
“DK”

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