

Sr. No.110

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

CRM-M-27565-2019

Date of decision:02.07.2019

M/s A.K.Paints and another

..... Petitioners

versus

M/s Shri Balaji Distributors

..... Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Kunal Dawar, Advocate
for the petitioners.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing of the Order dated 24.05.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Faridabad in a complaint case No.3197 of 2017 dated 04.07.2017(Annexure P-2) under Section 138 of Negotiable Instruments Act, 1881 whereby the application filed by the petitioner under Section 315 Cr.P.C. was dismissed; as well as the Order dated 03.05.2019(Annexure P-4), whereby the oral evidence of the petitioner was closed by Order, and further; for allowing the above said application.

Present petition has arisen from trial under Section 138 of the Negotiable Instruments Act, in which the evidence of the complainant already stood completed and the evidence of the accused/defence is to be lead; but which is lingering on, which led the trial Court to pass the Order impugned in the present petition.

While arguing the case, learned counsel for the petitioners has submitted that the Trial Court has wrongly observed that the application

under Section 315 Cr.P.C has been moved by the petitioner for the purpose

of delaying the trial. It is submitted that the evidence of the complainant was completed on 06.02.2019, thereafter, only three dates have been fixed for defence evidence and even on these three dates the petitioner could not complete his evidence due to the reasons beyond his control. But vide impugned Order dated 03.05.2019, the oral evidence of the petitioner/accused has been closed and thereafter, the application moved by the petitioner under Section 315 Cr.P.C has been dismissed vide Order dated 24.05.2019. Now the case has been fixed for documentary evidence only. It is submitted by the counsel that this would deny a fair opportunity to the petitioner to defend himself against the charge.

After hearing the learned counsel for the petitioner and perusing the case file, this Court does not find any substance in the argument of learned counsel for the petitioner. Perusal of the file would show that while passing the Order dated 06.02.2019, the Trial Court had already cautioned the petitioner not to adopt the delaying tactics; with a further stipulation that if the petitioner wanted to move an application under Section 315 Cr.P.C then he should do the same at the earliest opportunity. This promptitude was not shown by the petitioner. Still further, the impugned order dated 03.05.2019 makes it clear that earlier also the complainant had taken more than required time for cross-examination of the complainant; by wasting several opportunities. Therefore, this Court does not find any illegality, irregularity or perversity in the impugned orders, warranting any interference with the same, so far as the merits of the case are concerned.

However, since the petitioner is an accused facing a trial for the

charge for which he can even suffer the punishment of imprisonment, therefore, lest the petitioner should have an impression, though mistaken, that he has not been granted proper opportunity to defend himself against the charge, it would not be unjustified if the petitioner is granted one effective opportunity even to lead the oral evidence in his defence by producing himself or any other witness before the Trial Court, though by putting him to some appropriate financial burden.

Accordingly, the present petition is disposed of with a direction that the Trial Court shall grant one effective opportunity to the petitioner to lead his oral evidence; including presenting himself as a defence witness. However, this would be subject to payment of Rs.25,000/- as costs. The amount of the costs shall be deposited by the petitioner with **Aashiana Children's Home, Sector 15, Chandigarh**. Since the case is already fixed by the Trial Court for the documentary evidence on 05.07.2019, therefore, it is ordered that the petitioner shall lead his oral evidence as well, on the said date or on any other date for which the Trial Court adjourns the case for the evidence of the petitioner.

However, it is clarified that the petitioner shall be granted the opportunity mentioned above only after he produces before the Trial Court receipt of having deposited the costs as ordered hereinabove.

2nd July, 2019

Shivani Kaushik/hemlata

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*