

Sr. No.133

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

CRM-M-41791-2019

Date of decision:27.09.2019

Gajender Singh Ravish

.....Petitioner

versus

State of Haryana and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Vivek Goyal, Advocate
for the petitioner.

Rajbir Sehrawat, J(Oral)

Present petition has been filed for quashing of the Order dated 04.09.2019(Annexure P-5) whereby the evidence of the petitioner has been closed by the Trial Court; without affording him appropriate opportunity to lead his defence evidence.

It is contended by learned counsel for the petitioner that the petitioner being an accused, has to be given a fair opportunity to defend himself and, at least, to rebut the presumptions envisaged against him under the Negotiable Instruments Act. To discharge the burden, qua rebuttal of the fact of existence of legally enforceable liability against the petitioner, the petitioner had sought to examine six persons as witnesses and to lead in evidence three sale deeds as defence evidence. By producing the sale deeds and the witnesses, the petitioner intends to prove that the cheque were given as surety to the complainant for ensuring certain transactions of sale of properties in his favour through the above-said sale deeds. The persons, whom the petitioner intends to examine as witnesses, had transferred the said properties in favour of the complainant on asking of the petitioner and

for which it is only the petitioner; who had paid the consideration to the vendors of the said sale deeds. Hence, the evidence sought to be produced by the petitioner is necessary for just decision of the case. It is further submitted that the Trial Court has given an exaggerated version qua the petitioner availing opportunities for leading the defence evidence. In fact, the petitioner availed only two effective opportunities. On one opportunity, the petitioner made his application for appearing himself as his own witness. On the second opportunity, the petitioner did appear and led the evidence in this regard. Thereafter, no opportunity has been provided by the Court below to lead the evidence in defence.

Having heard the learned counsel for the petitioner and having perused the Order passed by the Court below, this Court finds substance in the argument of learned counsel for the petitioner. The zimni orders placed on record by the petitioner; do reflect that the petitioner has not wasted the opportunities granted to him to lead the evidence. Of course, the petitioner may have deviated from the normal course; by not specifying so far the list of witnesses, but now the petitioner has specified the witnesses whom he want to examine and the documents which he want to place on record. Therefore, the evidence which has been sought to be lead by the petitioner in his defence, now stands specified him.

The petitioner is an accused for an offence, alleged through a complaint in which even the details of the legally enforceable liability have not been specified by the complainant. The petitioner has taken a pro-active step to rebut the complainant qua the aspect; which otherwise is not even disclosed by the complainant to the Court. So he deserves to be permitted to bring those facts on record. Otherwise also, the petitioner being an

accused for an offence, for which he can suffer even imprisonment, lest the petitioner should have any impression, even though mistaken, that he is not being given proper opportunity to defend himself, it would not be unjustified to grant one opportunity to the petitioner to lead his evidence in defence, however, by putting him to some appropriate financial burden.

In view of the above, the petition is allowed. The Trial Court is directed to grant one effective opportunity to the petitioner to examine in his defence evidence, the above-said six persons and the three documents, however subject to payment of Rs.25,000/- as costs. The costs is directed to be deposited with the Poor Patients Welfare Funds, PGI, Chandigarh. It is further ordered that the petitioner shall be granted the opportunity, as ordered above, only when the petitioner produces the receipt of costs having been deposited, as ordered above.

27th September, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*