

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-7073 of 2018 (O&M)

Date of decision:10.02.2020

Mohit Vij

... Petitioner

Vs.

Pawan Kumar

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. R.S.Randhawa, Advocate
for the petitioner.

Mr. Naveen Gupta, Advocate
for the respondent/complainant.

SUVIR SEHGAL, J.

The instant petition has been filed under Section 482 of Code of Criminal Procedure (hereinafter referred to as “Cr.P.C”) for setting aside of the impugned order dated 02.01.2018 (Annexure P-4) whereby evidence of the petitioner-accused was closed by the Judicial Magistrate Ist Class, Faridabad and setting aside the order dated 10.01.2018 (Annexure P-1) whereby an application under Section 311 Cr.P.C moved by the petitioner, was dismissed denying him an opportunity to lead evidence in defence in Complaint No.1736 of 2016 under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as “the Act”).

The respondent-complainant had filed a complaint under Section 138 of the Act alleging that he had advanced a friendly loan of ₹3,15,000/- to the petitioner in October 2015, which was to be returned in

March 2016. In order to discharge the debt, the petitioner issued a cheque dated 10.03.2016 for the said amount. The cheque was drawn on Indian Bank, Sector 22, Faridabad, however, on presentation, it was returned by the banker, vide memo dated 31.03.2016 with the remarks "Payment Stopped by Drawer" which resulted into filing of the above said complaint by the respondent.

Learned counsel for the petitioner has submitted that after availing six opportunities, the complainant had closed his evidence on 03.10.2017, but the petitioner was given only four opportunities to lead his evidence in defence. By order dated 02.01.2018 (Annexure P-4), the trial Court closed his evidence and immediately thereafter, on 05.01.2018, (Annexure P-2), the petitioner filed an application under Section 311 Cr.P.C for additional evidence. He further submitted that cheque, in question had been stolen from him and upon coming to know of the same, he had given instructions to his banker on 27.08.2015 to stop the payment of the cheque. According to him, the respondent is a blackmailer who, in connivance with his erstwhile partner, who had stolen the cheque, had filed the complaint to extract the money from the petitioner. It is the submission of the petitioner that he wanted to produce evidence on both the said counts for which he had filed an application under Section 311 Cr. P.C but the same was declined by the trial Court without appreciating the factual position.

Learned counsel for the respondent has submitted that the petitioner had availed numerous opportunities to lead evidence in defence but he had failed to produce even a single witness. He further submitted that

application filed by the petitioner is vague. By referring to the cross-examination of the respondent-complainant, he argued that no suggestion regarding the cheque being stolen was put to the respondent, therefore, the petitioner cannot be permitted to lead evidence in this regard.

Counsel for the parties have been heard.

An examination of the paper book and the orders passed by the trial Court shows that petitioner has been remiss in leading evidence in defence. He had availed four opportunities but failed to produce even a single witness. No explanation has come forth from the petitioner as to why he did not lead any evidence on the said dates. However, the Court feels that interest of justice would be met in case the petitioner is given one effective opportunity to lead his entire evidence for which the respondent can be adequately compensated by way of the costs.

Accordingly, the impugned orders dated 02.01.2018 (Annexure P-4) and 10.01.2018 (Annexure P-1), are set aside and the trial Court is directed to grant one effective opportunity to the petitioner to lead the entire evidence at his own responsibility subject to deposit of ₹25,000/- as costs, which will be paid to the respondent.

The trial Court is directed to fix the date for this purpose. It is made clear that deposit of the costs will be a condition precedent for leading of evidence in defence by the petitioner.

With these observations, the present petition is disposed of.

(SUVIR SEHGAL)
JUDGE

February 10, 2020
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No