

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRM-M-43205-2017(O&M)

Date of Decision:-31.10.2022

Harbir Singh Palawat.

.....Petitioner.

Versus

Anil Kumar Singh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Shiv Kumar, Advocate for the Petitioner.

Mr. Shashi Kumar Yadav, Advocate for the respondent.

JASJIT SINGH BEDI, J. (ORAL)

The Prayer in this petition under Section 482 Cr.PC is for setting aside the order dated 15.07.2017 (Annexure P-3) passed by the Trial Court vide which the oral evidence of the petitioner-accused has been closed and the order dated 28.08.2017 (Annexure P-5) vide which the application filed by the petitioner/accused for recalling the order dated 15.7.2017 has been dismissed.

The brief facts of the case are that the respondent/complainant filed a complaint against the petitioner/accused under Section 138 of Negotiable Instruments Act with the allegations that the petitioner had taken a friendly loan of Rs.1,65,128/- from the respondent/complainant for his use in the month of January 2012. As the petitioner/accused had failed to make the repayment of the said amount, an account payee cheque no.005199 dated 27.03.2013 for Rs.1,65,128/- was issued by the petitioner to the

complainant/respondent which on presentation was returned back as unpaid with the remarks “kindly contact the drawer”. Pursuant thereto a complaint came to be filed and the petitioner was ordered to be summoned under Section 138 of the Negotiable Instruments Act, 1881.

During the pendency of the trial the petitioner filed an application for summoning a witness being the concerned clerk/Record Keeper, Bank of Maharashtra along with the record of the statement of account which was stated to have been opened in the year 1990-91 and closed in the year 1998. Record of the issuance of the cheque book including cheque no.005199 was also sought. A copy of the application is Annexure P-2 to the petition.

The Trial Court dismissed the said application vide order dated 15.7.2017 on the ground that the accused petitioner had availed several effective opportunities for leading defence evidence and no further ground for adjournment was made out. A Copy of the order dated 15.7.2017 is attached as Annexure P-3 to the petition.

Thereafter the petitioner filed an application for recalling of the order dated 15.7.2017. The said application came to be dismissed on the ground that the Trial Court had no jurisdiction to recall the order (Annexure P-3). It was further stated in the order that the petitioner/accused had availed 30 effective opportunities to present his defence and the application had been moved to delay the proceedings. The copy of the said order is attached as Annexure P-5 to the petition.

The aforementioned orders dated 15.7.2017 (Annexure P-3) and 28.08.2017 (Annexure P-5) are impugned in the present petition.

On the filing of the petition on 15.11.2017 the following order

was passed:-

“ It is contended, inter alia, on behalf of the petitioner that he was initially permitted to deposit the diet money amounting to `120 (Rupees One Hundred and Twenty Only) in relation to his application dated 30.03.2017 (Annexure P-2), vide which the record of statement of account maintained in the N.I.T. Faridabad Branch of Bank of Maharashtra was sought to be summoned to be led into defence evidence.

In spite of issuance of summons, however, no Report was apparently forthcoming and the Ld. Court thereafter instead of exhausting the available options to secure presence of the witness as prescribed under Law, closed the oral evidence from the petitioner's side, vide the order passed on 15.07.2017 (Annexure P-3), and thereafter rejected his subsequent application for recalling the aforesaid order on 28.08.2017.

Notice of motion for 09.01.2018.

The Ld. Trial Court may continue with recording further evidence from the defence side in the case, but shall not close such evidence finally without instructions from this Court.”

The matter was taken up from time to time and was also referred to the Mediation Centre but as no compromise could be arrived at, it has come up for final adjudication today.

The Counsel for the petitioner contends that the petitioner had deposited the diet money amount of Rs.120/- in relation to his application dated 30.03.2017 (Annexure P-2) vide which the record of the statement of account maintained in the NIT Faridabad Branch of Bank of Maharashtra was sought to be summoned to be lead in defence evidence. In spite of the issuance of summons, when the witness did not appear the learned Court ought to have explored the available options to secure the presence of the witness instead of closing the evidence vide impugned order dated 15.7.2017 (Annexure P-3). He contends that he seeks one opportunity only to bring on record the relevant evidence as set out in the application dated

30.03.2017 (Annexure P-2) and no loss shall be suffered by the complainant/respondent who shall be at liberty to cross examine the witness in accordance with law.

The Counsel for the respondent/complainant on the other hand while supporting the impugned orders contends that the application was filed before the Trial Court just to delay the proceedings. He however states that in case appropriate directions are issued to the Trial Court to conclude the trial expeditiously, preferably within three months from the next date of hearing he shall have no objection if one opportunity is granted to the petitioner-accused to lead his defence evidence in furtherance of the application (Annexure P-2).

I have heard learned Counsel for the parties at length.

The petitioner-accused had moved an application dated 30.03.2017 (Annexure P-2) to summon the concerned clerk/Record Keeper of Bank of Maharashtra to substantiate his defence. The said application was dismissed and a recalling application was also dismissed. In the present case, the interim order was passed on 15.11.2017 as per which the evidence from the side of the defence was to be lead but it was not to be closed without instructions from this Court.

In view of the respective claims of both the parties, it would be appropriate to allow the petitioner/accused one effective opportunity to lead his defence evidence in furtherance of the application dated 30.03.2017 (Annexure P-2) subject to the petitioner depositing a sum of Rs.10,000/- as costs with District Legal Services Authority, Faridabad.

In view of the above discussion, the orders dated 30.03.2017 (Annexure P-2) and 28.08.2017 (Annexure P-5) are hereby quashed. The

petitioner-accused is granted one effective opportunity to lead his defence evidence in further of the application dated 30.03.2017 (Annexure P-2). The Trial Court shall summon the concerned witness along with the relevant record in terms of the application Annexure P-2 or on the petitioner/accused moving a fresh application in that regard on the next date fixed before it. Thereafter, the Trial Court is directed to conclude the Trial within a period of 03 months, after the evidence in defence is lead and also subject to payment of costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Faridabad.

Disposed of with the aforementioned directions.

(JASJIT SINGH BEDI)
JUDGE

October 31, 2022

Vinay

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