

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

CRM-M-38953-2022

Date of Decision: September 27, 2022

M/s Deepak Water Supplier and another

...Petitioners

Versus

Kamal Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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

Mr. Gaurav Gupta, Advocate for the respondent.

AMAN CHAUDHARY, J.(Oral)

Present petition has been filed under Section 482 of the Code of Criminal Procedure for quashing of order dated 20.07.2022 (Annexure P-5) whereby application filed by the petitioner for summoning the case file titled Dharmender vs. M/s Deepak Water Supplier and another bearing No.NACT NO.3175 of 2018 in the criminal complaint No.NACT No.2319 of 2018 dated 28.03.2018 titled as Kamal Kumar vs M/s Deepak Water Supplier and another, vide which the petitioner intends to put the handwriting on the said original cheque in the cross examination of the complainant which is attached with the said file (NACT NO.3175 of 2018), has been wrongly dismissed.

Learned counsel has brought to the notice of this Court that there are two complaints filed against the petitioners bearing NACT No.3175 of 2018 filed by one Dharmender and NACT No.2319 of 2018 filed by Kamal Kumar, on account of dishonour of two cheques, allegedly issued to the aforesaid complainants, one of whom is a party respondent in this petition and is the brother of son-in-law of the

petitioner, to whom the cheques are stated to have been given.

It is submitted by the learned counsel that the application filed by the petitioners while the examination of respondent herein was in progress, praying for summoning of the case file of the connected case, so as to put the original cheque of that case to complainant-respondent Kamal Kumar was dismissed by the trial Court, whereby his defence is being prejudiced, as the complete opportunity is not being afforded to him to prove his innocence. He submits, the stage of the case being the cross-examination and both cases are listed before the same court, granting of one opportunity would not prejudice the complainant.

Notice of motion in this case was issued on 13.09.2022. Pursuant thereto learned counsel for the complainant-respondent had on 22.9.2022 sought time to address arguments. In the said order, it was also mentioned that the reply, if any, be also filed before the next date of hearing, which the respondent has chosen not to file.

Per contra, he, however, submits that the impugned order has been rightly passed as the application came to be filed after a delay of 3 years. He also submits that the grant of opportunity will delay the matter, thus, prays for dismissal of the present petition.

Heard the learned counsel for the parties.

It is settled law that the production of any document or file can be directed by the Court on being satisfied that it is necessary and desirable for the purpose of the just and proper adjudication of the matter and to do complete justice.

In the present case, the petitioners are seeking an opportunity to only put the original cheque of a connected case issued by the

petitioner No.2, wherein he is himself an accused, bearing No.NACT 3175 of 2018 filed by one Dharmender. It is well settled by now that right of accused to prove his innocence is valuable and the denial whereof can gravely prejudice the defence granting of an opportunity for summoning of the file, to substantiate his defence would not be prejudicial to the other side. It even becomes the bounden duty of the Court to ensure that the trial must be towards giving complete opportunity to both sides, so that the truth can be unearthed, to arrive at a just conclusion which may be in favour or against a particular party. The impugned order reflects that the dismissal of the application filed by the petitioners is merely on the ground that both the cases are independent, even though both cases relate to the same accused. Portion relevant to the instant petition, of the impugned order dated 20.7.2022 reads thus:-

“It is that other complaint instituted by Dharmender that the applicant/ accused wishes to put to the complainant in his cross-examination. It is pertinent to record that both the cases, i.e. The other case file and the present one, are independent cases. The accused shall have sufficient opportunity to defend himself in both these cases. This court fails to see any necessity for calling the other case file for the purpose of further cross-examination of the complainant. The two cases may relate to the same accused or may relate to the same transaction, or may be fixed on the same day but both have independent identity. Even otherwise, the accused is free to ask relevant questions pertaining to any other transaction which is remotely related to the present one. According, present application is dismissed. Now the case is adjourned to 07.09.2022 for deferred cross-examination of CW-1.”

The learned counsel for the petitioners had also submitted that both cases are listed before the same court, as such, there seems to be no such reason for not permitting the petitioners, the prayer made by them in the application.

Fairness of trial being sacrosanct in the judicial system, the dismissal of the application of the petitioners would amount to denial of a fair opportunity to defend themselves.

The afore stated peculiarity of facts and circumstances lead this Court to an inducible conclusion that it is imperative in view of the settled law and to meet the ends of justice that one effective opportunity be afforded to the petitioners as prayed for in the application filed by them, which though came to be dismissed by the trial Court vide the impugned order.

Accordingly, the present petition is allowed. The order dated 20.7.2022, Annexure P-5 is therefore set aside. The trial Court is directed to grant one effective opportunity to the petitioners in terms of the application filed by them, Annexure P3, which shall be subject to costs of Rs.10,000/- to be paid to the complainant- respondent.

Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present order, which was only for the purpose of deciding the present petition.

Copy of this order be given to the counsel for the parties under the signatures of Bench Secretary of this Court.

September 27, 2022
sarita

(AMAN CHAUDHARY)
JUDGE

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