

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(120)

CRM-M-39266-2022 (O&M)

Date of decision: - 01.09.2022

Shailendra Pratap Singh

....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. Pratham Sethi, Advocate, for the petitioner.

Mr. Dhruv Sihag, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-31937-2022

This is an application filed for grant of leave under Rule 3/A(1) of Chapter VI, Part B, Volume V of Punjab and Haryana High Court Rules and Orders to file the present petition.

In view of averments made in the application, the same is allowed and leave is granted under the aforesaid Rules and Orders to file the present petition.

CRM-M-39266-2022

This is the first petition under Section 482 of Cr.P.C. for seeking quashing of arrest warrants issued vide order dated 17.08.2022 (Annexure P-6) passed by the Additional Sessions Judge, Karnal in CRA-687-2019 titled as Shailendra Pratap Singh Vs. Kusum Lata Chaudhary, arising out of complaint bearing No.2380/2018 under Section 138-B of

the Negotiable Instruments Act, 1981 titled as Kusum Lata Choudhary Vs. Shailendra Pratap Singh.

Learned counsel for the petitioner has submitted that the petitioner could not appear on 17.08.2022 as the wife and children of the petitioner met with an accident on 19.07.2022 regarding which even an FIR No.230 dated 18.08.2022 has been registered by the present petitioner. It is further submitted that an exemption application was also filed on the said date, but the same has been dismissed.

This Court has heard learned counsel for the petitioner and has gone through the paper-book.

The petitioner in the present case has made every effort to delay the proceedings in the complaint instituted under Section 138 of the Negotiable Instruments Act, 1981 (for short 'NI Act'). A perusal of the judgment dated 17.10.2019 (Annexure P-2) would show that respondent No.2 had instituted a complaint under Section 138 of the NI Act on 17.05.2018 with respect to the dishonour of cheque dated 07.01.2018 for an amount of Rs.15,00,000/-. The petitioner was convicted vide judgment dated 17.10.2019, by the Judicial Magistrate 1st Class, Karnal under Section 138 of the NI Act and sentenced to undergo simple imprisonment for a period of one year and was also directed to pay compensation of an amount of Rs.20,00,000/-. An appeal was filed against the said judgment by the petitioner in the year 2019. On 23.09.2021, the petitioner had not appeared before the Court and accordingly, arrest warrants were issued against the petitioner and thereafter, the petitioner filed a petition bearing CRM-M-42507-2021 before this Court. In the said petition, on

08.10.2021, this Court was pleased to issue notice of motion for 24.11.2021 and also directed the petitioner to appear on 11.10.2021 and thereafter, the matter came up for final hearing, wherein, learned counsel for respondent No.2 had submitted that in order avoid delay, he had no objection in case the order dated 23.09.2021 was set aside, but had prayed that the appeal be decided expeditiously. In view of the stand taken by respondent No.2, the order dated 23.09.2021 was set aside with a direction to the appellate Court to decide the appeal as expeditiously as possible, preferably, within a period of six months from the date of receipt of certified copy of the present order. The relevant portion of the said order is reproduced herein below: -

It is further submitted that the complainant-respondent no.2 has no objection in case the impugned order is set aside but however, request has been made for expeditious decision of the appeal as the case is a case which arises out of conviction under Section 138 N.I. Act.

Keeping in view the above said facts and circumstances moreso, the fact that as per respondent no.2, the petitioner has appeared on 11.10.2021 and furnished his bail bonds, the present petition is allowed and the order dated 23.09.2021 (Annexure P-6) is set aside.

In view of the fair stand taken by respondent no.2 and also in view of the fact that complaint under Section 138 N.I. Act was instituted on 17.05.2018 and the order of conviction was passed on 17.10.2019 and the appeal is of the year 2019, the appellate Court is requested to decide the case as expeditiously as possible and preferably within a period of 6 months from the date of receipt of certified copy of the present order.

Pending miscellaneous application, if any, stands disposed of in view of the abovesaid order.

(VIKAS BAHL)
JUDGE

March 29, 2022"

The petitioner instead of assisting the Court in adjudicating the matter, had moved one application after another seeking exemption in order to prolong the hearing of the case. The said facts have been noticed in the impugned order dated 17.08.2022 and the same are detailed hereunder: -

- (i) On 13.05.2022, an exemption application was filed by the petitioner on the ground that the petitioner was under treatment in Aastha Multispecialty Hospital, Gorakhpur.
- (ii) On 24.05.2022, an exemption application was filed on the ground that father of the petitioner was not well.
- (iii) On 27.05.2022, another application for exemption was filed on the ground that father was again not well.
- (iv) On 31.05.2022, another application for exemption was filed on the ground that father of the petitioner was still admitted in Jaypee Hospital.
- (v) On 17.08.2022, another exemption application was filed by the petitioner by stating that his wife and children had met with an accident and along with the said application, a medical certificate dated 14.08.2022 was also filed.

It has been observed in the impugned order that after passing of the order dated 29.03.2022 by this Court in CRM-M-42507-2021, the petitioner had never appeared and the said fact has not been disputed before this Court. In the impugned order, it has also been noticed that the medical certificate, which has been issued by the private hospital is,

prima facie, a procured document, inasmuch as, the date which has been mentioned in the certificate on the right side is stated to be 14.05.2022, whereas, the date on the bottom is stated to be 14.08.2022. No name of the doctor who has issued/signed the said certificate has been mentioned. Cleverly enough, even the date of the accident has not been mentioned. This Court is of the opinion that the said document *prima facie* seems to be a procured document. A perusal of the FIR No.230 dated 18.08.2022 would also show that the petitioner is trying to play hide and seek with the Court, inasmuch as, in the said FIR which was registered on 18.08.2022 i.e., after passing of the impugned order dated 17.08.2022, it has been stated that the alleged incident had taken place on 19.07.2022. It is surprising that the alleged incident had taken place on 19.07.2022 and the FIR has been registered after a period of more than 29 days and that too, after the impugned order dated 17.08.2022 had been passed. Thus, the registration of FIR No.230 dated 18.08.2022 is apparently an attempt to create evidence in favour of the petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition deserves to be dismissed and is accordingly, dismissed.

However, nothing stated above shall be construed as a final expression of opinion on the merits of the case and the trial would proceed independently of the observations made in the present case which are only for the purpose of adjudicating the present petition.

September 01, 2022
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No