

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Pronounced on: 6th May, 2022**

+ **CRL.M.C. 971/2022, CRL.M.As. 4151/2022 & 4152/2022**

MOHAN BIR SINGH

Petitioner

Through Mr. Sundeep Srivastava, Mr. R.K.
Vasan and Mr. Paran Kumar, Advs.

versus

GURMUKH SINGH

Respondent

Through Mr. Gurvinder Singh, Adv.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

1. This petition under Article 227 of the Constitution of India has been filed by the accused before the learned Trial Court, being aggrieved by the orders of the learned Additional Sessions Judge (West), Tis Hazari Courts, dated 23rd November, 2021, declining to interfere with the orders of the learned Trial Court dated 21st February, 2018 and 20th February, 2019 closing the opportunity of the petitioner to cross-examine the respondent/complainant.

2. Mr. Sundeep Srivastava, learned counsel for the petitioner submitted that the learned Trial Court, as also the learned Additional Sessions Judge, had passed the orders only taking into consideration the past conduct of the petitioner, without noticing that the petitioner had been granted only one opportunity to cross-examine the respondent/complainant. It was submitted

that the absence of the petitioner on various dates before the learned Trial Court had been on account of some misunderstanding with the counsel and the fact of his absence or the issuance of process under Section 82 Cr.P.C., could not have been the ground to disallow the petitioner, an opportunity to cross-examine the respondent/complainant. It was further submitted by learned counsel that the petitioner had a sound defence, inasmuch as it was his case, that he had repaid the loan completely to the respondent/complainant and the complaint case was a sheer misuse of the cheques that the respondent/complainant had retained, despite the demand for its return. Learned counsel further submitted that the petitioner would abide by all conditions that the court may deem fit to impose, while granting an opportunity to cross-examine the respondent/complainant.

3. Mr. Gurvinder Singh, learned counsel for the respondent/complainant submitted that the entire aim of the petitioner was to somehow derail the trial. It was submitted that despite having been served, the petitioner willfully remained absent. The complaint had been filed on 2nd March, 2016. Despite summons, the petitioner never appeared. Thereafter on 31st August, 2016, Non-Bailable Warrants were issued against him. These were cancelled on application on 14th December, 2016. On 5th May, 2017, the charge was framed against the petitioner and the matter was listed for evidence on 23rd September, 2017. No cross-examination took place on 23rd September, 2017 and the matter was adjourned to 21st February, 2018. On that date, neither the petitioner nor his counsel appeared and the matter was adjourned on 9th July, 2018. Once again, he was absent and Non-Bailable Warrants were issued against him and further proceedings under Section 82 Cr.P.C. were also initiated. Since

notice was issued to the surety, the petitioner appeared on 7th January, 2019. An application for recalling the order dated 21st February, 2018, closing the right of the petitioner to cross-examine the respondent/complainant was filed but once again the matter kept dragging, till 20th February, 2019, when finally the application for recall was also dismissed. Thus, it was submitted that the courts below had rightly considered the conduct of the petitioner. It was further submitted that the statement of the petitioner/accused had also been recorded and the matter had been fixed for defence evidence when the present petition was malafidely filed. Hence, it was prayed that the petition be dismissed.

4. I have heard the learned counsel for the parties and have perused the record. Though it is no doubt evident that the petitioner has been amiss in attending the hearings, it is to be noted that when the evidence was closed in 21st February, 2018, the petitioner was not represented, even by a counsel. On the previous date, the petitioner had been exempted through counsel, therefore, when the petitioner claimed that he was unaware of the date of hearing, the benefit of doubt can be given to him. The petitioner has explained that the mix-up in the dates occurred on account of his counsel, Mr. Shokeen Ali, leaving the firm, starting his own practice and then, failing to follow up the case and informing the petitioner.

5. In the interest of justice and fair trial, as a last chance, one opportunity is granted to the petitioner to cross-examine the respondent/complainant. The petition is accordingly allowed and the impugned order dated 23rd November, 2021 is set aside, subject to costs of Rs.10,000/- which shall be paid to the respondent/complainant before the learned Trial Court.

6. Subject to such payment of the cost, the learned Trial Court will fix one effective date for cross-examination of the respondent/complainant. In the event, the petitioner does not cross-examine the respondent/complainant on that date, no further opportunity shall be granted.
7. A copy of this order be transmitted to the learned Trial Court electronically.
8. The petition, along with the pending applications, stands disposed of.
9. The judgment to be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MAY 06 , 2022/ak

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