

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

117

CRM-M-7713-2023 (O&M)

Date of Decision: 26.07.2023

PANKAJ GOYAL @ GUPTA @ PANKAJ GUPTA

... Petitioner

Versus

STATE OF HARYANA AND ANOTHER

... Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Baljeet Beniwal, Advocate
for the petitioner.

HARNARESH SINGH GILL, J.(Oral)

Challenge is to the order dated 06.02.2023 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Faridabad, vide which the oral evidence of the petitioner/accused has been closed by order in a case bearing NACT No.7383/2018 dated 12.06.2018 under Sections 138 and 142 of Negotiable Instruments Act.

Learned counsel for the petitioner contends that an application under Section 315 Cr.P.C. was filed by the accused-petitioner to examine himself as witness, which was allowed on 29.11.2022 and the case was adjourned to 12.12.2022; that on 12.12.2022, the petitioner/accused sought an adjournment and the matter was adjourned to 09.01.2023; that on 09.01.2023, the petitioner could not appear and moved an application seeking exemption, which was allowed and the matter was adjourned to 25.01.2023 for the defence evidence and that on 25.01.2023 statement of DW-1, namely, Pankaj Gupta was recorded and the matter was adjourned to 06.02.2023 for remaining defence evidence.

He further submits that on 03.02.2023, the petitioner had filed an application summoning the witnesses and for depositing the diet money on his behalf; that, though, the witnesses were served on 03.02.2023, yet they could not appear on 06.02.2023 and accordingly, the oral evidence of accused-petitioner was closed by Court order. He prays for only one opportunity to get the remaining witnesses examined, which may even be subject to costs as grave prejudice shall be caused to the accused-petitioner in the absence of non-examination of the said witnesses.

I have heard the learned counsel for the petitioner.

Since no order that may prejudice the interest of the private respondent is proposed to be passed, therefore, there is no necessity of issuing notice to him to seek his response, at this stage.

As per the learned counsel for the petitioner, the trial Court declined the prayer of the petitioner to summon the witnesses, for which on 03.02.2023, the petitioner had filed an application for summoning the witnesses and deposited the diet money on the same day. The said witnesses were served on 03.02.2023, but could not appear on 06.02.2023, it being a short date and the oral evidence was closed.

The object underlying [Section 311](#) CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code, as was held by Hon'ble The Supreme Court in the case of V N Patil Vs. Niranjan Kumar, (2021) 3 SCC 661.

Considering the peculiar facts and circumstances of the case, particularly in wake of depositing the diet money and the witnesses having also been served and to secure ends of justice, the order dated 06.02.2023 (Annexure P-2) passed by the learned Judicial Magistrate, 1st Class, Faridabad, is set aside and the trial Court is directed to grant one more opportunity to the petitioner to examine the witnesses mentioned in the application moved by him on 03.02.2023, subject to deposit of costs of Rs.15,000/- to be paid to respondent No.2.

Disposed of accordingly

26.07.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No