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

**CRM-M-11322-2022
Date of Decision: 23.11.2023**

Gurpiar Singh

..... Petitioner

Versus

Amritpal Singh

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Karan Bhardwaj, Advocate,
for the petitioner.

None for the respondent.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure for directing the learned Additional Sessions Judge, Mansa to decide application dated 07.12.2021 (Annexure P-5) filed by the petitioner under Section 386 read with Section 391 of the Cr.P.C. in Criminal Appeal No.62 of 2019 instituted on 18.04.2019 (Annexure P-2).

2. Learned counsel for the petitioner submitted that the dispute in the present case pertains to Section 138 of the Negotiable Instruments Act where the petitioner was convicted by the learned JMIC, Mansa vide judgment dated 13.03.2019 (Annexure P-1). Thereafter, he preferred an appeal before the learned Sessions Court and thereafter, he filed an application under 386 read with Section 391 Cr.P.C. for recalling of the witnesses to elicit certain information and to further place on record various

cases filed by the complainant/respondent against the petitioner for misusing the cheque book at various other districts. The aforesaid application was a comprehensive application which was filed vide Annexure P-5 and in the aforesaid application, the learned Appellate Court had issued notice and thereafter the matter was sent to the Lok Adalat, but the matter was not settled and vide Annexure P-13 on 11.03.2022, the learned Appellate Court had directed that the case be now heard for arguments on the main appeal. He further submitted that in case the main appeal itself is heard, then the purpose of filing of the aforesaid application under Section 386 read with Section 391 Cr.P.C. would be forfeited and in fact the aforesaid application is required to be decided in accordance with law prior to the hearing of the aforesaid appeal and in this regard he referred to the judgment of the Hon'ble Supreme Court in "Asim @ Munmun @ Asif Abdulkarim Solanki Vs. State of Gujarat", 2020(1) R.C.R. (Criminal) 977 to contend that the aforesaid application is required to be heard and disposed of in accordance with law prior to the hearing of the main appeal.

3. In the present case, notice of motion was issued by this Court on 16.03.2022 and the learned Appellate Court was directed to adjourn the case beyond the date fixed by this Court. Thereafter, it was recorded on 28.04.2022 that the service is complete but nobody appeared on behalf of the respondent. It was also recorded on 12.10.2022 that the service of the respondent is complete but nobody has caused appearance on behalf of the respondent and therefore, this Court would further proceed to decide the present petition on the basis of the submissions made by the learned counsel for the petitioner and the averments made in the present petition. The learned

counsel for the petitioner has specifically stated that in view of the interim order passed by this Court, the final arguments in the appeal have not been heard till date.

4. The petitioner had filed an application under Section 386 read with Section 391 Cr.P.C. vide Annexure P-5 for recalling of witness i.e. CW1/Amritpal Singh and also to place on record various cases filed by the complainant/respondent against him but instead of hearing and disposing of the application, the learned Appellate Court vide Annexure P-13 has now kept the case for arguments on main appeal even after issuing of notice in the aforesaid application. The reliance made by the learned counsel for the petitioner in the aforesaid judgment of the Hon’ble Supreme Court in Asim @ Munmun @ Asif Abdulkarim Solanki’s case (supra) is well placed. It is always in the interest of justice to consider and decide the application which was filed vide Annexure P-5 in accordance with law prior to the hearing of the main appeal especially when the matter is pertaining to Section 138 of the Negotiable Instruments Act.

5. Consequently, the present petition is allowed. It is directed that the learned Appellate Court shall first deal with the application (Annexure P-5) and decide the same in accordance with law and thereafter, proceed with the appeal and decide the main appeal in accordance with law.

23.11.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No