

CRM-M-10997-2020

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-10997-2020

Date of decision : 13.12.2023

DR. KIRAN JYOTI SHARMA

... Petitioner

Versus

M/S SAGAR BRICKS COMPANY THROUGH ITS PARTNER
SAMIR KALRA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. D.K. Prajapati, Advocate
for the petitioner.

Mr. Imran Mohd., Advocate
for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 25.02.2020 (Annexure P-7) passed by the Judicial Magistrate, 1st Class, Naraingarh, District Ambala in a complaint under Section 138 of the NI Act, 1881 bearing NACT No.173 of 2015 dated 17.10.2015 whereby the defence evidence has been closed by a Court order.

2. The brief facts of the case are that the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act against the present petitioner as well as against her husband Dr. P.K. Sharma alleging therein that in discharge of their legal liability, the petitioner had issued a cheque for an amount of Rs.25,00,000/- in favour of the respondent which when presented for encashment had been dishonoured. Thereafter, a legal notice had been served upon the petitioner who did not make the payment leading to the

filing of the complaint under Section 138 of the Negotiable Instruments Act and the consequential summoning order.

3. During the course of the Trial, on 19.11.2019, the statement of the petitioner was recorded under Section 313 Cr.P.C. and the case was fixed for 28.11.2019 for defence evidence. On 21.11.2019 itself, the petitioner had provided a list of witnesses to be examined in defence who were to be summoned. On 28.11.2019, while some defence witnesses were summoned, ASI Tehal Singh had not appeared and was summoned through non-bailable warrants. On 13.12.2019 and 21.01.2020, once again, the remaining DWs were summoned through non-bailable warrants which firstly remained unexecuted but were subsequently executed. However, some witnesses remained unserved and their salaries were ordered to be attached. Thereafter, on 06.02.2020, DW-HC Devender Pal appeared as DW2 and fresh bailable warrants were issued against the remaining DWs and the case was fixed for 25.02.2020. However, on that day, the impugned order came to be passed.

4. The learned counsel for the accused/petitioner contends that the evidence had been closed by a Court order for no fault of the accused. In fact, the deposition of ASI Tehal Singh was essential for the just adjudication of the case as the husband of the petitioner had reported the lose of a cheque-book with the Branch Manager, United Bank of India, Ambala Cantt on 17.12.2014 and an DDR in that regard had been registered on 21.12.2014. Further, an earlier complaint had been filed by certain persons who were partners with the present complainant

regarding another cheque and the said complaint had been found to be false on the basis of an inquiry conducted by ASI Tehal Singh. He, therefore, contends that the petitioner was diligent in seeking the examination of the defence witnesses and merely because an official witness i.e. ASI Tehal Singh had not appeared before the Court despite issuance of non-bailable warrants could not lead to the passing of the impugned order closing the evidence of the accused. The Trial Court ought to have adopted coercive steps to secure the presence and examination of the said DW. Even otherwise, the examination of ASI Tehal Singh was essential for the just adjudication of the case.

5. On the other hand, the learned counsel for the respondent contends that no fault could be found with the impugned order as the accused/petitioner intended to delay proceedings before the Trial Court and this petition was liable to be dismissed.

6. I have heard the learned counsel for the parties.

7. In the instant case, after the statement of the petitioner was recorded under Section 313 Cr.P.C., an application to summon defence witnesses was moved immediately. While some of the witnesses came to be summoned and examined, ASI Tehal Singh was summoned through bailable warrants thereafter, non-bailable warrants and even his salary had been attached. Despite the said fact, he chose not to appear. For no fault of the petitioner, the evidence was ordered to be closed. In fact, the Court ought to have resorted to coercive steps to procure his presence in view of the application dated 21.11.2019 (Annexure P-2) and the statement recorded under Section 313 Cr.P.C. (Annexure P-9) which

clearly showed that the examination of DW Tehal Singh was essential to establish the defence of the accused that the cheque-book had been stolen and in an earlier complaint had been found to be false. On the contrary, the Trial Court has passed the impugned order.

8. In view of the aforementioned discussion, the order dated 25.02.2020 (Annexure P-7) passed by the Judicial Magistrate, 1st Class, Naraingarh, District Ambala in complaint under Section 138 of the NI Act, 1881 bearing NACT No.173 of 2015 dated 17.10.2015 is set aside and 8 weeks more time is granted to the petitioner to lead her remaining defence in accordance with law.

(JASJIT SINGH BEDI)
JUDGE

13.12.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No