

CRM-M-22539-2018 (O&M)

219 (2nd case)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-22539-2018 (O&M)

Date of decision: September 01, 2023

Mukesh Chandra Sharma

....Petitioner

versus

Satya Prakash Sharma @ S. P. Sharma

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Aditya Jain, Advocate for petitioner.

None for respondent.

ARUN MONGA, J. (ORAL)

Petition herein is under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of impugned order dated 03.05.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Faridabad whereby cross-examination of DW1 and DW2 was closed by Court order, in a complaint case No.63 of 2016 dated 06.02.2016/ 05.05.2017 filed by petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short 'NI Act').

2. Succinct facts first, as pleaded in the instant petition.

2.1 A complaint under section 138 of the NI Act was filed by the petitioner against the respondent averring that petitioner and respondent are old friends having good relations. Respondent sought a loan of Rs.1,50,000/- from the petitioner and the same was given to him on 15.11.2014 in cash. Respondent assured to return the same within one year. In order to discharge his liability, respondent issued a cheque No.504313 dated 21.11.2015 and requested the petitioner to present the same on 23.11.2015. When presented, the same was dishonored vide return memo dated 01.12.2015 for the reasons "Account closed". On further assurance of respondent, petitioner again presented the cheque in January 2016, which was again dishonoured vide return memo dated 12.01.2016 on the ground "account closed". Petitioner issued a legal notice dated

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16.01.2016 to the respondent. Therefore, complaint (Annexure P-1) under section 138 of NI Act was filed against respondent by petitioner.

3. Learned counsel for the petitioner contends that respondent adduced his evidence by way of an affidavit which was allowed vide order dated 27.07.2017. Thereafter, respondent filed an application for adducing additional evidence by way of an affidavit. Petitioner had also submitted detailed reply to the said application.

3.1. On 03.05.2018, petitioner filed an application for exemption from personal appearance due to sudden illness of his wife as he had to take her to the Hospital.

3.2. Vide impugned order dated 03.05.2018 (Annexure P-3), learned trial Court closed the opportunity to cross-examine DW1 and DW2 merely on the basis of conjectures and surmises and without any justification.

4. None appears on behalf of the respondent, despite notice, which is deeming suggestive that respondent has no objection to the instant petition being allowed.

5. I have heard learned counsel for petitioner and gone through the case file.

6. Perusal of impugned order shows that though on an application of the complainant, his personal appearance was exempted for the day, but it was further stated that on the humble request of learned Court below, counsel for the complainant became adamant and did not cross-examine the defence witnesses. It was further stated that despite the fact that complainant already availed four opportunities and costs of Rs.1,000/- were also imposed, counsel for complainant failed to cross-examine DW-1 and DW-2. Thus, the cross-examination of DW-1 and DW-2 was closed by Court order.

6.1. Conduct of petitioner/ complainant's counsel before Court below is reprehensible. It is his failure to cross-examine the defence witnesses. His conduct is an affront to the Court below. Be that as it may, Petitioner/ complainant cannot be put to adverse consequences for such conduct of his counsel before the Court below.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence and cross-examination of opponent's

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witnesses ought not to be taken away by the Court except in a case of their deliberate omission/failure to do the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein, unless afforded an effective opportunity to cross-examine DW1 and DW2 which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to complainant/petitioner to adduce/conclude evidence, notwithstanding that cross-examination of DW-1 and DW-2 of the complainant was closed vide impugned order of the Court dated 03.05.2018.

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, I deem it appropriate to grant one effective opportunity to complainant/petitioner to cross-examine DW-1 and DW-2. Accordingly, the instant petition is allowed and the impugned order dated 03.05.2018 is set aside. Learned trial Magistrate is directed to give one effective opportunity to complainant/petitioner to cross-examine DW-1 and DW-2. Trial to proceed further.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 01, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No