

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

CRM-M-15345-2023

Date of Decision:-16.08.2023

Dr. Kapil Setia.

.....Petitioner.

Vs.

Amritpal Singh.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Piyush Khanna, Advocate for the Petitioner.

Mr. Paras Jagga, Advocate for the respondent.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Seton 482 Cr.PC is for setting aside the order dated 22.02.2023 (Annexure P-4) passed by Judicial Magistrate Ist Class, Abohar in NACT No.341 of 2019 whereby the petitioner/complainant's evidence was closed by order.

2. The brief facts of the case are that the respondent/accused in discharge of his legal liability had issued a cheque bearing no.924597 dated 22.11.2018 for Rs.32,00,000/- with the assurance that the same would be encashed when presented for encashment. However, the said cheque came to be dishonoured leading to the filing of the complaint under Section 138 of the Negotiable Instruments Act, 1881 on 01.03.2019 and the consequent summoning order. A copy of the complaint is attached as Annexure P-1 to the petition.

3. Pursuant to the appearance of the respondent/accused the Trial began. The statement of the complainant was recorded. On 22.02.2023 the

complainant/petitioner had moved an application seeking exemption from personal appearance as he being a government doctor with the Govt. of Rajasthan was on duty at the dispensary where a Covid Vaccination Camp had been organized. Despite the said application having been filed the impugned order came to be passed whereby his after notice evidence was closed by order of the court on 22.02.2023. The copy of exemption application along with impugned order are annexed with the petition as Annexure P-3 & P-4 respectively.

4. The Counsel for the petitioner/complainant contends that after issuance of notice in the complaint, the respondent/accused had lingered on the matter on one pretext or the other and had only appeared after the issuance of bailable warrants. On account of the Covid-19 Pandemic the case was adjourned from time to time and it was only on 6.4.2022 that the examination in chief of the petitioner was recorded along with the evidence of CW-1 Chandan Ahuja. In the meantime, compromise talks had begun and the matter had been taken up before the National Lok Adalat but as the compromise could not be effected, the matter was sent back to the regular courts and a last opportunity was given to the accused/respondent to cross examine the witnesses. However, the petitioner/complainant could only be partly cross examined on 07.12.2022. In the meantime, the accused had regularly moved exemption applications without any valid justification. On the other hand when the petitioner/complainant moved an application for exemption as he was a government doctor and had been engaged in a medical camp the said application was declined vide the impugned order. He contends that an opportunity be provided to the petitioner/complainant to lead his evidence.

5. The Counsel for the respondent/accused on the other hand

contends that the impugned order had been rightly passed. The delay if any was on the part of the petitioner/complainant and not the answering respondent/accused.

6. I have heard learned Counsel for the parties.
7. Quite apparently, the petitioner/complainant is a government doctor. An application for exemption from personal appearance accompanied by a pamphlet of a medical camp was filed in the Court but the Court has chosen to dismiss the same merely by saying that it was an action plan case. No attempt whatsoever has been made to examine the reasons mentioned in the application for seeking exemption. Even otherwise, the petitioner/ complainant who is diligently pursuing the instant complaint must be given an opportunity to lead his evidence in accordance with law and no irreparable loss shall be suffered by the respondent/accused in case such an opportunity is given to the petitioner/complainant.
8. In view of the above, present petition is allowed and the order dated 22.02.2023 (Annexure P-4) is set aside. The parties shall appear before the concerned Court on the next date of hearing fixed before it and an adequate and effective opportunity shall be provided to the petitioner/complainant to lead his evidence in the manner that he deems fit.
9. Disposed of.

(JASJIT SINGH BEDI)
JUDGE

August 16, 2023
Vinay

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No