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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-36996-2018
Date of decision: 15.09.2023

SUKHDEV SINGH

...Petitioner

VERSUS

BIKKAR SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Nandan Jindal, Advocate and
Mr. Abhinandan Jindal, Advocate for the petitioner.

Ms. Poonam Verma, Advocate for the respondent.

JASGURPREET SINGH PURI, J. (Oral)

1. This present petition has been filed under Section 482 Cr.P.C. seeking quashing of the order dated 30.07.2018 (Annexure P-1), passed by learned Sub-Divisional Judicial Magistrate, Dhuri, whereby the evidence of the petitioner has been closed by order in complaint case No.NACT/139/2015 dated 21.07.2015, titled as "*Bikkar Singh versus Sukhdev Singh*", under Section 138 of Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner submitted that it is a case where in the year 2018, the statements of the petitioner were recorded under Section 313 Cr.P.C. after conclusion of complainant's evidence and thereafter the defence evidence of the petitioner was closed. He further submitted that the petitioner immediately moved an application for summoning of the concerned clerk from the office of District Transport Officer, Sangrur who did not appear

despite being served. He further submitted that the learned trial Court instead of summoning the concerned official through warrants or any coercive methods has closed the evidence. He also submitted that so far as the aforesaid witness is concerned, he is not only a material witness but his testimony goes into the root of the case since the case pertains to a complaint under Section 138 of the Negotiable Instruments Act, 1881 and by way of testimony of the aforesaid witness, it can be proved that there was no enforceable debt qua the present petitioner. He further submitted that by examining the aforesaid official from the office of the District Transport Officer, Sangrur, the petitioner would be able to build up his defence to the extent that so far as the petitioner is concerned, he only stood as a guarantor for another person, namely, Pawan Kumar, who had taken loan from the finance company which was seized by the financier and even otherwise also the entire money stands paid to the finance company because the truck itself was sold and therefore the impugned order being erroneous is liable to be set aside. He also submitted that the further proceedings before the trial Court was stayed by this Court on 27.08.2018 and in view of the stay order, there is no progress in the trial and adequate opportunity may be granted to the petitioner for summoning the clerk from the office of District Transport Officer, Sangrur along with the record.

3. On the other hand, Ms. Poonam Verma, Advocate for the respondent has submitted that the petitioner was given proper opportunity before closing of the evidence and the concerned official from the office of District Transport Officer, Sangrur did not turn up for deposition but that does not mean that the petitioner has a right to file an application for summoning him again.

4. I have heard the learned counsel for the parties.
5. It is a case where a short point involved in the present case is that after recording the statements of the petitioner under Section 313 Cr.P.C., his defence was closed and before that the Court had summoned the aforesaid clerk from the office of the District Transport Officer, Sangrur, who did not appear despite service but instead of taking any other action against the aforesaid official who was summoned and he did not appear despite service, the learned trial Court closed the defence evidence. From the facts and circumstances of the present case and submissions made by the learned counsel for the parties, it transpires that the witness of the aforesaid clerk from the office of the District Transport Officer, Sangrur is material and goes into the root of the controversy. The impugned order which has been passed by learned Sub-Divisional Judicial Magistrate, Dhuri is apparently erroneous and is liable to be set aside. Adequate opportunity should have been granted by the learned Sub-Divisional Judicial Magistrate, Dhuri for the purpose of summoning of the witness as aforesaid.
6. Consequently, the present petition is allowed. The impugned order dated 30.07.2018 (Annexure P-1) is hereby set aside to the extent that the defence evidence has been closed by order. The learned Sub-Divisional Judicial Magistrate, Dhuri is directed to provide adequate opportunity to the present petitioner as aforesaid, in accordance with law.

15.09.2023
Chetan Thakur

(JASGURPREET SINGH PURI)
JUDGE

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