

130

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-50137-2023 (O&M)

Date of decision: 05.10.2023

M/s Ahluwalia Bottling Company and another

....Petitioners

versus

M/s Garg Traders, Ghas Mandi, Jagadhari

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.G.C.Shahpuri, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Present petition has been filed under Section 482 Code of Criminal Procedure for quashing of order dated 08.09.2023 (Annexure P-5), vide which evidence of petitioner(s)/accused is closed by court order in complaint case No.NIA/ACT/576/2015 titled as M/s Garg Traders vs. M/s Ahluwalia Bottling Company, without affording property opportunity to the petitioner(s) to lead evidence.

2. Learned counsel for the petitioner(s) submits that the respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881, read with Section 420 IPC against the present petitioners (petitioner no. 1 being a firm and petitioner no. 2 being the proprietor thereof). After the closure of evidence of the respondent-complainant, the statement of the petitioner-accused was recorded under Section 313 Cr.P.C., wherein he took a specific stand that he did not put his signature on the check in question. He also claimed that he is not the proprietor of the firm, which was being run by his brother, who has since passed away.

3. Learned counsel for the petitioner(s) further contends that faced with the aforesaid situation, petitioner No. 2 filed an application (Annexure P-2) seeking permission to examine the handwriting and fingerprint expert and to take photographs of disputed and standard signatures of the check in question. The said application was contested by the

respondent by filing a reply (Annexure P-3) to the application, raising various preliminary objections and praying for the dismissal of the said application.

4. The learned trial court, in an order dated 13.04.2023 (Annexure P-4), allowed the application filed by petitioner no. 2, after appreciating the controversy. However, a condition was attached to the permission, stating that he should first establish his standard signatures on file. The relevance of the evidence/report regarding the comparison of disputed signatures made by an expert would be considered at the time of the final arguments.

5. He further submits that the case was scheduled for 08.09.2023 for the evidence of the petitioner(s). However, on the said date, an application for exemption from personal appearance was filed by petitioner No. 2 on the grounds that he was advised bed rest due to an accident, and he could not appear before the trial court. Furthermore, in the same accident, the brother of petitioner No. 2 had died. However, the learned trial court dismissed the application and canceled the bail of petitioner No. 2, issuing warrants for his arrest. Additionally, by the same order, the trial court closed the evidence of the petitioner by court order on 08.09.2023 (Annexure P-5).

6. Thereafter, petitioner no. 2 filed an application for surrender and bail on 20.09.2023, as scheduled. The learned trial court admitted petitioner No. 2 on bail on 20.09.2023, and accordingly, petitioner No. 2 furnished bail and surety bonds.

7. Learned counsel for the petitioners submits that petitioner no. 1 is aggrieved by the order dated 08.09.2023, only to the extent of the closure of his evidence by court order, without any good reason. Hence, the present petition.

8. Given the nature of order being passed, there is no necessity to issue notice to the respondents, as no serious prejudice would be caused to them. Notice to respondent herein is thus dispensed with.

9. I have heard learned counsel for petitioner(s) and gone through the case file.

10. The impugned order dated 08.09.2023 reads as under:-

“Today, the case was fixed for defence evidence. An application for exemption from personal appearance of accused has been filed. The same is objected to by the counsel for the complainant. Heard. Perusal of file reveals that on last date a specific order was passed to the effect that considering the previous conduct of the accused, no exemption

application shall be allowed and further if the standard signature is not proved on the file, his opportunity to examine the expert witness as well as defence evidence shall be closed by Court's order. Today, again application for exemption has been moved stating that accused is on bed rest. No medical record has been annexed therewith. This court is of the view that accused is deliberately absenting himself to delay the trial. No good reason with any record has been shown. Hence, the present application is dismissed. Accordingly, bail of accused is cancelled and bonds furnished by accused are forfeited to State. Presence of accused is ordered to be procured by way of warrant of arrest returnable for 20.09.2023. Further, as per the order dated 29.08.2023, the opportunity to examine the expert and also the evidence of the accused in defence is hereby closed by Court's order. Now, to come up on 20.09.2023 for appearance of the accused and final arguments.”

11. 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 ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. Prejudice would indeed be caused to petitioner no.2 herein, unless afforded an opportunity to lead evidence 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 petitioner no.2 to adduce/conclude evidence.

12. In the peculiar circumstances of the case, as is borne out from the submissions noted herein above and the proceedings of learned trial Court, the instant petition is allowed and one or more effective opportunity is granted to the present petitioner(s)/accused to lead evidence in support of his case, subject of course to the discretion of learned trial Court to give further adjournment for the purpose depending upon exigencies of work.

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

(ARUN MONGA)
JUDGE

05.10.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No