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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-54900-2022 (O&M)****DATE OF DECISION: 01.08.2023****Surinder Kumar Jain****...Petitioner****Versus****Vipan Kumar Jain and others****...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Atul Goyal, Advocate,
For the petitioner.

Mr. A. P. Kaushal, Advocate,
For respondents No. 1 and 2.

ARUN MONGA, J. (ORAL)

Petitioner seeks quashing of an order dated 26.10.2022 (Annexure P-15), passed by learned Judicial Magistrate Ist Class, Ludhiana, in a complaint case bearing No. COMI/257/2017 dated 26.04.2017 under Sections 120-B, 419, 420, 467, 468, 471 read with Section 34 of Indian Penal Code (for short "IPC"), whereby pre-charge evidence of the complainant has been closed by order.

2. Petitioner filed a complaint against the respondents with the allegations that accused in connivance of each other forged the Will of his father. An affidavit was also prepared by forging the signatures of his mother. Whereas, his mother is paralyzed since 2003 and is unable to sign. Learned trial Court after due appreciation of preliminary evidence summoned the accused vide order dated 04.05.2018. The case was then put up for recording of pre-charge evidence.

3. Learned counsel for the petitioner contends that on 26.10.2022, complainant moved an application for exemption from personal appearance on the ground that his close relative is admitted in hospital. However, learned trial Court without considering his application and reasons stated therein, closed the

pre-charge evidence by order. Learned counsel further contends that non-application of mind and mechanical exercise thereof is borne out from the fact that, on the one hand in impugned order presence of complainant has been marked, whereas on the other hand, it is mentioned that an application for exemption from personal appearance had been moved.

3. Learned counsel further contends that witnesses, being sought to be examined by petitioner are very material. Petitioner will suffer irreparable loss in case impugned order is not set-aside. He further contends that no prejudice will be caused to the respondents as the matter is already pending for cross-examination of witnesses.

4. On the other hand, learned counsel for respondent opposes the petition and states that learned trial court has rightly allowed the application.

5. 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 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-plaintiff to adduce/conclude evidence.

6. That aside, I am in agreement with the arguments of learned counsel for the petitioner, as noted herein above.

7. In the peculiar circumstances of the case, the instant petition is allowed subject to payment of costs of Rs.10,000/- with the condition that petitioner shall not be given more than one effective opportunity to examine all the witness, subject of course to the discretion of learned trial

Court to give further adjournment for the purpose, depending upon exigencies of work.

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

AUGUST 01, 2023
Shalini

(ARUN MONGA)
JUDGE

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