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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: October 30, 2023

Parmal Singh

....Petitioner

versus

Amardeep Kaur Bhullar

....Respondent

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

Advocate for complainant (name not legible on the presence slip).

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 12.09.2023 (Annexure P-9) passed in a complaint case bearing No.COMA-142-2020 titled "Parmal Singh versus Amardeep Kaur Bhullar", whereby evidence of the prosecution was closed by court below.

2. Learned counsel for the petitioner submits that petitioner filed a complaint case under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') before learned Sub-Divisional Magistrate, Rajpura, against the respondent alleging that respondent issued 02 cheques bearing No.091921 dated 07.12.2019 for an amount of Rs.10,00,000/- and No.091922 dated 07.12.2019 for an amount of Rs.16,00,000/- in favour of petitioner/complainant, to discharge his liability. When presented, aforesaid cheques were not encashed and complainant received the memo from the Bank with the reasons that the signatures differs.

2.1. Learned counsel also submits that complainant appeared as CW-1 and was examined in the preliminary evidence. On the basis of aforesaid, respondent was summoned vide order dated 24.02.2020 (Annexure P-2). Learned counsel further submits that due to outbreak of COVID-19, case was adjourned for 03 dates

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and thereafter, was listed for service of respondent. Even bailable and non-bailable warrants were also issued against the respondent. On 19.07.2022, respondent appeared before the trial Court and moved an application under Section 145 of the Evidence Act, 1872 (hereinafter referred to as 'Evidence Act') for granting permission to cross-examine the complainant. Vide order dated 19.07.2022, the same was allowed, and respondent was also admitted to bail.

2.2. Learned counsel further contends that on 25.08.2022 (Annexure P-5), petitioner/ complainant could not appear before the trial Court and the case was adjourned to 03.10.2022. During pendency, petitioner was arrested on 16.09.2022 in another case bearing FIR No.218 dated 16.09.2022 (Annexure P-6), registered under Sections 471/ 193/ 120-B of IPC, at Sector-36 Police Station, in Chandigarh. Vide order dated 03.02.2023 (Annexure P-7), petitioner was granted bail by a co-ordinate Bench of this Court. Learned counsel contends that due to arrest of the petitioner, as aforesaid, petitioner/ complainant could not appear before Court below on 03.10.2022. Further, he was not informed by his counsel before the trial Court to appear on 10.02.2023, 16.03.2023, 20.04.2023 and 08.06.2023.

2.3. Learned counsel submits that vide impugned order dated 12.09.2023 (Annexure P-9), evidence of the petitioner was closed by order, due to his non-appearance. He urges that non-appearance of the petitioner before trial Court was not intentional or deliberate, but due to unavoidable circumstances as he remained unaware for causing appearance before trial Court on the aforesaid dates. Thereafter, petitioner upon getting to know about next date fixed before trial Court rushed to engage a new counsel and appeared on 12.10.2023. Now the case is further fixed for 31.10.2023 for recording of statements under Section 313 Cr. P.C.

3. On advance service of copy of petition, learned counsel for respondent appears and opposes the petition while supporting the impugned order stating it to be rightly passed by the Court below.

I have heard learned counsel for the parties and perused the case file.

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5. Petitioner ought not to suffer for the fault of learned counsel representing him before learned Court below who did not inform the petitioner/ complainant to appear on aforesaid dates. Evidence of petitioner/ complainant is very much relevant and goes to root of the matter since respondent failed to discharge his liability and even cheques issued by him were returned by the Bank with the reason that signatures differs.

6. In the aforesaid premise, petition is allowed. Impugned order dated 12.09.2023 (Annexure P-9) is set aside. Petitioner/ complainant shall be given one effective opportunity to adduce his evidence, subject to costs of Rs.5,000/- to be paid to the opposite party, subject of-course to discretion of learned Court below to adjourn the matter depending upon exigency of work before it.

7. Disposed of, accordingly.

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

(ARUN MONGA)
JUDGE

October 30, 2023
jyoti thakur

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No