

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

128

CRM-M-61376-2023
Date of decision: 06.12.2023

SATPAL

....Petitioner

Versus

ASHISH SAINI

...Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amit Dhawan, Advocate
for the petitioner.

KULDEEP TIWARI. J.(Oral)

1. The defence evidence of the petitioner was closed vide impugned order dated 24.11.2023 (Annexure P-4), passed by learned JMIC, Mukerian, District Hoshiarpur, in complaint bearing NACT No.251/2018, dated 14.11.2018, under Section 138 of the Negotiable Instruments Act, caused grievance to the present petitioner, which led to filing of the instant petition, seeking quashing of order (supra).

2. Learned counsel for the petitioner submits that the petitioner is facing trial under Section 138 of the Negotiable Instruments Act, in complaint (supra), and in defence, he wanted to examine the record keeper of SSP office concerned, to prove his innocence before the learned trial Court concerned.

However, the learned trial Court concerned, erroneously and illegally closed the evidence of the petitioner, vide impugned order dated 24.11.2023.

3. This Court examined all the zimni orders, as placed on record by the learned counsel for the petitioner with the instant petition, and the same reveals that, vide order dated 31.10.2023, the official of SSP office concerned was present for examination, however, he could not be examined on that day and resultantly, he was bound down to appear on 14.11.2023, i.e. the next date of hearing. Thereafter, the official concerned did not cause appearance, which led the learned trial Court concerned to issue non-bailable warrants for 24.11.2023 (Annexure P-4). On 24.11.2023, despite issuance of non-bailable warrants, the said official did not make an appearance before the learned trial Court concerned, and instead of taking further necessary action, the learned trial Court concerned erroneously closed the defence evidence of the petitioner, primarily on the ground that the case falls under action plan category, therefore, requires early disposal. Though, it is not under dispute that the instant complaint falls under action plan category and requires early disposal, however, that cannot be a ground to scuttle the right of an accused to examine witnesses in his defence. In the instant matter the witness i.e. record keeper of the SSP office concerned, was duly bound down for appearance on 14.11.2023, by the learned trial Court concerned, despite that he was not examined and defence evidence of the accused-petitioner was closed by the learned trial Court concerned. In the opinion of this Court, the procedure adopted by the learned trial Court concerned would tantamount to denying the fair trial, which is a basic right of every accused person. The accused has a right to prove his innocence by leading his evidence in defence.

4. At this stage, it is not necessary to issue notice to the respondent

concerned, but this Court deems it appropriate to issue a mandamus upon learned trial Court concerned, to ensure the examination of official i.e. record keeper of SSP office concerned, who was bound-down to appear before the learned trial Court concerned, and thereupon, the final order be passed in the instant complaint. The impugned order is modified only to this extent.

5. Disposed of accordingly.

06.12.2023
amandeep

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No