

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-20406 of 2024 (O&M)
Date of Decision: 25.04.2024

Vikas Kumar ...Petitioner
Versus
Dushyant Narang ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Manuj Nagrath, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the Complaint No. 12224 Dated 09.10.2017 titled as “**Dushyant Narang Vs. Vikas Kumar**” 138 (Annexure P-4); the order dated 02.05.2023 (Annexure P-9) passed by the trial Court, whereby, the defence evidence was closed by Court order and the impugned order dated 02.04.2024 (Annexure P-12) passed by the trial Court, whereby, the application under Section 311 Cr.P.C. moved by the present petitioner/accused was ordered to be dismissed by the trial Court.

2. Learned counsel for the petitioner contends that the petitioner/accused agreed to pay a sum of Rs. 7 lacs to the respondent/complainant, in lieu of the sales made by the petitioner of the vehicles as per the partnership deed. As per the case set up by the respondent/complainant on 08.08.2017, the petitioner/accused out of

total amount of Rs. 7 lacs, paid a sum of Rs. 30,000/- as cash and issued a cheque bearing No. 449993 dated 08.08.2017 for a sum of Rs. 6,70,000/- drawn on Dena Bank, Bharat Nagar Chowk Branch, Ludhiana (Annexure P-1). On presentation, the cheque stood dishonoured on 09.08.2017 with the remarks “funds insufficient” and the respondent got a legal notice dated 30.08.2017 served upon the petitioner through his counsel to pay a sum of Rs. 6.70 lacs. However, when no payment was made by the petitioner, the respondent filed complaint dated 09.10.2017 (Annexure P-4) before the Court of Chief Judicial Magistrate, Ludhiana. Vide impugned order dated 09.10.2017 (Annexure P-5), the trial Court summoned the petitioner/accused to face trial in the present case.

3. Learned counsel for the petitioner contends that the impugned order dated 02.04.2024 (Annexure P-12) is legally unsustainable. The case was listed for complainant evidence on 10.08.2018 and remained pending for over 04 years for the conclusion of the prosecution evidence. Learned counsel for the petitioner has relied upon the zimini orders (Annexure P-6) passed by the trial Court in this regard. Learned counsel further contends that on 20.03.2023, the statement of accused under Section 313 Cr.P.C. was recorded and only three dates, i.e., 24.03.2023, 06.04.2023 and 25.04.2023 were granted for recording of evidence and vide the impugned order dated 02.05.2023 (Annexure P-9), the defence evidence of the

petitioner/accused was closed by the Court order and the case was listed on 17.05.2023 for final arguments. At this stage, the petitioner moved an application to summon and examine the following witnesses in defence:-

(I) Finger Print and Handwriting Expert regarding documents Ex.C1 and Ex.C2.

(ii) Concerned Record Keeper/Authorized person of Income Tax Department, Rishi Nagar, Ludhiana alongwith the record regarding the facts that Dushyant Narang son of Ravi parkash Narang having its PAN No. ADXPN7810M has shown his income from M/s Narang Auto Deals from year 2015-2016 to year 2017-2018 in his Income Tax Returns, or not.

4. Learned counsel for the petitioner further contends that the trial Court illegally dismissed the application under Section 311 Cr.P.C., only on the ground of delay in conducting the trial, without going into the zimini orders and the relevance of the application moved by the present petitioner. Learned counsel further contends that the trial Court committed manifest error by observing that the petitioner had delayed the trial before the trial Court for several years. Whereas from the record, it was evident that the prosecution did not conclude the trial for a period of over 04 years and the defence was not granted an opportunity to present its case before the trial Court.

5. I have considered the submissions made by the learned counsel for the petitioner and perused the record.

6. First of all, it is observed that the petitioner has filed present petition with a prayer to quash the Complaint No. 12224 Dated 09.10.2017 titled as “**Dushyant Narang Vs. Vikas Kumar**” 138 (Annexure P-4); the order dated 02.05.2023 (Annexure P-9) passed by the trial Court, whereby, the defence evidence was closed by Court order and the impugned order dated 02.04.2024 (Annexure P-12) passed by the trial Court, whereby, the application under Section 311 Cr.P.C. moved by the present petitioner/accused was ordered to be dismissed by the trial Court. It is observed that the petitioner has not raised any submissions with regard to the quashing of the complaint (Annexure P-4) and for setting aside the order dated 02.05.2023 (Anenxure P-9) passed by the trial Court. Even during the course of arguments before this Court, the main stress of learned counsel for the petitioner was on setting aside the order dated 02.04.2024 (Annexure P-12) passed by the trial Court, whereby, the prayer made by the petitioner under Section 311 Cr.P.C., was declined.

7. Further, the primary contention raised on behalf of the petitioner is that the delay in the present case had been caused by respondent/complainant and there was no delay on the part of the present petitioner. It was submitted that the case was listed for

prosecution evidence on 10.08.2018 and the respondent/complainant took 04 years to conclude its evidence, which is apparent from the zimini orders (Annexure P-6). I have perused the zimini orders (Annexure P-6) passed by the trial Court. From the zimini orders, it is clear that the petitioner absented during the trial on 12.02.2020 and did not appear till 09.07.2021. Thereafter, the case remained pending for cross-examination of the complainant witness, but the petitioner delayed the trial before the trial Court. Still further, the petitioner cannot be permitted to delay the trial for an indefinite period as the trial in the present case had commenced in the year 2017 and the impugned order has been passed by the trial Court on 02.04.2024, i.e., after a period of 07 years. Still further, the trial Court had rightly observed that the accused had moved the application before the trial Court with the sole motive to delay the trial proceedings. In the present case, the petitioner had appeared for the second time on 24.03.2021 and was admitted to bail. The complainant evidence was closed on 06.03.2023 and the statement of the accused was recorded under Section 313 Cr.P.C. On 09.03.2023. Even thereafter, the petitioner managed to delay the trial for about 01 year and did not move the present application. All of a sudden, when the case was listed for final arguments, the present application was moved by the petitioner for cross-examination of two witnesses under Section 311 Cr.P.C. The trial Court was justified in observing that the trial had been delayed by the present petitioner for about 07 long years and

even when the case was listed for defence evidence, the petitioner did not submit the list of defence witnesses. Even, when the evidence was closed by Court order on 02.05.2023, the petitioner did not challenge the said order before this Court and rather moved a fresh application under Section 311 Cr.P.C., to examine two witnesses in defence. In fact, the petitioner is guilty of serious misconduct and is not entitled to any equitable relief. Apart from that, the petitioner could not explain the importance/relevance of the witnesses, who are sought to be examined by the present petitioner. In fact, such an act on the part of the petitioner is not only delaying tactic, but also amounts to filling in a lacuna in the defence case. No doubt, the provisions of Section 311 Cr.P.C. confers discretionary and wide powers on the Court, but such discretionary power is to be exercised judiciously and finding no merit in the present petition, the same is ordered to be dismissed.

25.04.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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