

CRM-M-42686-2021
Decided on: 11.03.2024

versus

Mr. Ashit Malik, Advocate
for respondents No.2 and 3.

2. Learned counsel for the petitioner submits that the impugned order dated 02.09.2021 had been passed contrary to the material on record as it has been recorded therein that no affidavits of the petitioner was on the case file; whereas affidavit of the petitioner was on the case file marked as Ex. PW-1/E, wherein the petitioner had specifically stated that money had been withdrawn from the account of the petitioner. In support of his submissions, learned counsel has drawn the attention of this Court to the affidavit of the petitioner, which has been annexed as

Annexure P-1. Learned counsel for the petitioner contends that he is thus, aggrieved by the fact that despite commencement of defence evidence, the petitioner has not been called to depose as prosecution witness despite having been cheated by the accused in the present case coupled with the factum of the petitioner having handed over all the relevant documents to the Investigating Officer. A prayer has, therefore, been made to take a compassionate view and one effective opportunity be granted to the petitioner to get himself and Jagjit Singh examined.

3. Per contra, learned counsel for the respondents has submitted that petitioner and said Jagjit Singh had not been arrayed as witnesses in the list of witnesses by the investigating officer of the case; the case has been pending since the year 2006 and after framing of the charges, case had been adjourned more than 119 times. It was at a highly belated stage the petitioner had filed the application after the prosecution evidence had been closed by the Public Prosecutor vide order dated 30.11.2017. Thus, it had been rightly dismissed by the Court below vide the impugned order.

4. Heard learned counsel for the parties and perused the relevant material on record.

5. A perusal of the file reveals that no opportunity had been granted to the petitioner to examine himself as a witness despite his affidavit having been exhibited as Ex.PW-1/E. In the opinion of this Court, if the petitioner is not granted an opportunity to get himself examined, he would suffer irreparable loss, which in turn would result in miscarriage of justice. Therefore, for just and proper adjudication of the case, this Court

deems it appropriate to grant only one effective opportunity to the petitioner to get himself examined and in case, he fails to do so, the trial Court shall proceed with the trial.

6. In the wake of the above, impugned order dated 02.09.2021, is set aside and the present petition is allowed in the following terms:

- (i) The petitioner is granted only one effective opportunity to get himself examined on the next date of hearing before the learned trial Court.
- (ii) In the event of default of the petitioner, the case shall not be adjourned any further for the examination of the petitioner.
- (iii) This, however, shall be subject to payment of costs in the sum of Rs.5,000/- to be deposited with the District Legal Services Authority, Ambala, which shall be a condition precedent.

11.03.2024
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No