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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-53875-2024 (O&M)
Date of decision: 04.12.2024

Saurabh Sharma ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mohit Sharma, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. CRM-47898-2024

Allowed as prayed for, subject to all just exceptions.

Documents are taken on record.

2. CRM-M-53875-2024 (O&M)

The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) by the petitioners for setting aside the order dated 06.07.2024 (Annexure P-2), passed by the Court of learned Additional Sessions Judge, Sonipat, whereby the revision filed by the petitioner against the order dated 18.12.2023 (Annexure P-1), passed by the learned trial Court presided over by learned Sub Divisional Judicial Magistrate, Ganaur in case titled as *Shri Om vs. Saurabh Sharma*, vide which the defence evidence of the petitioner-accused was closed, had been dismissed.

3. Brief facts relevant for the purpose of disposal of the present petition are that respondent No. 2-Shri Om has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*)

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read with section 420 of IPC against the present petitioner. The petitioner had been summoned to face trial in the aforesaid complaint for commission of offence punishable under section 138 of the N. I. Act. After completion of the evidence of the complainant, the statement of accused under Section 313 of Cr.P.C. was recorded on 19.07.2023 and the case was adjourned for recording the defence evidence. The petitioner-accused had filed an application for giving permission to examine a handwriting expert, to which, the complainant had not raised any objection and consequently the said application was allowed on 27.07.2023. Thereafter, the case was adjourned for examination of handwriting and finger print expert as defence witness. However, despite availing a number of opportunities, the handwriting and finger print expert was not examined by the petitioner in his defence and ultimately, the learned trial Court, vide its order dated 18.12.2023, closed the defence evidence of petitioner-accused and fixed the case for final arguments. Aggrieved from the said order, the petitioner had preferred a revision before the Court of learned Additional Sessions Judge, Sonipat but the same had been dismissed, vide impugned order dated 06.07.2024. Hence, the present petition.

4. Learned counsel for the petitioner has argued that the impugned orders are not sustainable in the eyes of law as the same have been passed by the Courts below without applying their judicious mind. The learned trial Court had arbitrarily closed the defence evidence while denying further opportunity to the counsel of the petitioner. The learned trial Court had ignored the fact that the evidence of the handwriting and finger print expert was an important piece of evidence for his defence. The learned revisional Court had also ignored the factual matrix of the case and wrongly dismissed

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the revision petition of the petitioner. The adjournments and proceedings of the case before the learned trial Court had taken place without knowledge of the petitioner and he was not aware that the last opportunity was granted by the Court to produce the evidence. While submitting that examination of the handwriting and finger print expert is fundamental to the defence of the petitioner in order to prove his innocence, it is urged that the present petition deserves to be allowed and the impugned orders passed by the Courts below are liable to be set aside.

5. I have heard learned counsel for the petitioner at considerable length and have also perused the material placed on record.

6. The petitioner is facing trial in the aforementioned complaint for commission of offence punishable under Section 138 of the N. I. Act. When the case was fixed for defence evidence, the petitioner had moved an application on 20.07.2023 for examining a handwriting and finger print expert, which was allowed as no objection was raised to the same by the complainant. A perusal of the record as well as the orders passed by the Courts below reveals that the case was fixed for defence evidence and arguments for 07.08.2023, 16.08.2023, 25.08.2023, 11.09.2023 and 18.09.2023. However, no defence witness was examined by the petitioner. On 18.09.2023, even last opportunity was granted to the petitioner, subject to payment of cost of Rs.1000/-. On next date, though the petitioner paid the cost but still he did not produce the evidence. Thereafter, vide order dated 18.10.2023, he was again burdened with cost of Rs.500/- and the case was adjourned to 04.11.2023. On 04.11.2023, the learned trial court was on leave and the case was adjourned to 15.11.2023. On 15.11.2023 neither cost was

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paid by petitioner nor any evidence was led by him. Ultimately, vide order dated 18.12.2023, since neither cost was paid nor the defence evidence was led by the petitioner, the learned trial Court had closed the defence evidence. On going through the proceedings that had taken place before the learned trial Court, it is apparent that the petitioner had been granted ample effective opportunities to produce the defence evidence but he had failed to do so, despite having been burdened with cost. Hence, the petitioner cannot take a plea that he was not granted the opportunity to produce the defence evidence. Once an accused has been granted sufficient opportunity to lead defence evidence, including the opportunity to call witnesses, present documents, and make submissions, he cannot claim later that he was not afforded adequate time or resources to present his case. The Court must ensure that the accused is aware of his rights and responsibilities throughout the proceedings, and that he is provided with a reasonable opportunity to put forward his defence. Having had ample time to do so, the accused is not entitled to seek additional opportunities or claim unfairness at this stage, as the judicial process is designed to ensure both fairness and efficiency. Any further request for additional time or evidence would need to demonstrate exceptional circumstances, which have not been established here. Therefore, no infirmity or illegality is found in the orders passed by the Courts below and it is held that the petitioner is not entitled to any further opportunity to lead defence evidence. Hence, the present petition is dismissed.

7. While parting with this order, this Court is compelled to observe that it has emanated from the record that though the defence evidence of the petitioner-accused was closed by the learned trial Magistrate on 18.12.2023

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and the case was adjourned for hearing arguments, however, till date, the arguments have not been heard, despite the fact that there are specific instructions by this Court and the Magistrates have been submitting certificates also to the effect that in all criminal cases, the judgments have been pronounced with 14 days of final conclusion of evidence. Reference in this context may be made to the instructions issued by this Court vide circular/letter No. 23758 Gaz/IX.A.5 dated 29.11.1973, letter No. 29240 Gaz.II(2)/IX.C.18 dated 07.12.1981 and letter No. 1233/Spl. Gaz.II.17 dated 04.5.2013. As such, the Registry is directed to seek a report from the Magistrate concerned, who passed the order dated 18.12.2023 as well as from the Judicial Officer, who succeeded the Court, if any, calling upon to give reasons for not adhering to the instructions issued by this Court in this regard, within a period of one month from today.

8. After receipt of the report from the Magistrate concerned, the Registry shall put up this case before this Court in *Kutcha Peshi*.

04.12.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>