2024:PHHC:163108

**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

122 **CRM-M-54178-2024**
DECIDED ON: 29.10.2024

RAKESH KUMAR

... PETITIONER

VERSUS

ABHILASH KUMAR GOYAL

... **RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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Present: Mr. Sunny K. Singla, Advocate
for the petitioner.

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SANDEEP MOUDGIL, J

The jurisdiction of this Court under Section 528 BNSS, 2023 has been invoked seeking quashing of impugned order dated 07.10.2024 (Annexure P-5) passed by Judicial Magistrate Ist Class, Malerkotla in a complaint bearing No. NACT/650/2020, dated 21.12.2020 (Annexure P-1) filed under Section 138 of Negotiable Instruments Act, 1881 (for short referred to as '1881', titled as ***"Abhilash Kumar Goyal vs. Rakesh Kumar".***

2. The brief facts of the present case is that a complaint under Section 138 of 1881 was filed by respondent/complainant alleging that on 22.10.2020, petitioner/accused borrowed a sum of Rs.5,00,000/- from the complainant and in order to discharge his liability issued two post dated cheques. On presentation thereof, the same were returned dishonoured with the remarks 'Funds Insufficient'. Hence, the present complaint.

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3. Learned counsel for the petitioner argues that no prejudice would be caused to either of the parties if one opportunity is granted to the petitioner to further cross-examine the complainant. It is further argued that though the complainant was cross-examined by the counsel for the petitioner/accused, but petitioner was not present at that time, therefore, some relevant questions were left to be put to the respondent/complainant. Thus, only one effective opportunity be granted to cross-examine the complainant.

4. Heard learned counsel for the petitioner.

5. The only reason for recalling the complainant for further cross-examination is the absence of the petitioner. On perusal it is evident that respondent/complainant appeared on 13.06.2024, and was partly cross-examined by the defence. On that day, the petitioner/accused filed an exemption application citing illness. As a result, the cross-examination was deferred and completed on 15.07.2024. However, the accused again failed to appear, submitting another exemption application due to an alleged asthma attack. It is evident from the case file that out of 15 hearing, the petitioner/accused appeared only three times, despite being granted bail, and filed exemption applications on 12 occasions, citing various health issues. Despite the petitioner’s frequent absences, the court proceeded with the trial to safeguard the interest of the respondent, providing the defence ample opportunities to cross-examine the respondent.

6. From the above facts, it is crystal clear that the petitioner and his counsel had shown their careless attitude toward the proceedings, attempting to stall the trial. Even now more than two years have passed, the petitioner's failure to establish a defence does not warrant the re-examining of the the complainant.

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7 In the light of above, the present petition lacks merits and the impugned order 07.10.2024 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Malerkotla calls for no interference by this Court, as the same is passed in accordance with law.

8. Accordingly, the present petition stands dismissed.

(SANDEEP MOUDGIL)
JUDGE

29.10.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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