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IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

CRM-M-55039-2024

Date of Decision: 06.11.2024

GURPREET SINGH ALIAS JAGPREET SINGH

.....PETITIONER

VERSUS

ANPINDER SINGH

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep Kumar, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. This petition is filed under Section 582 of the BNSS, 2023, for quashing of order dated 09.10.2024, Annexure P-9, passed by the learned Additional Sessions Judge, Ludhiana, in appeal bearing No. CRA-905-2017 titled “Gurpreet Singh @ Jagpreet Singh Vs. Anpinder Singh” and also order dated 11.05.2017, Annexure P-5, passed in Criminal Revision No.66 of 19.10.2016 titled “Gurpreet Singh @ Jagpreet Singh Vs. Anpinder Singh” by the learned Addl. Sessions Judge, Ludhiana, and also the order dated 22.09.2016, Annexure P-4, passed by the learned Judicial Magistrate Ist Class, Ludhiana, in complaint No.COMA-7415-2014 titled “Anpinder Singh Vs. Gurpreet Singh @ Jagpreet Singh” filed under Section 138 of the Negotiable Instruments Act, 1881, being illegal and arbitrary.

2. It is contended by the learned counsel for the petitioner that in the complaint filed by the respondent – Anpinder against the

accused/petitioner, the learned Judicial Magistrate Ist Class, Ludhiana (for short – ‘trial Court’) served the notice of accusation vide order dated 01.07.2016 and adjourned the matter for 11.08.2016 for cross examination of the complainant and on that day, an adjournment was sought by the counsel for the accused and matter was adjourned to 16.09.2016 and on that date, an exemption application was filed on behalf of the accused/petitioner and the matter was adjourned to 21.09.2016, however, the matter was taken up on 22.09.2016 and the counsel for the accused/petitioner did not appear for cross-examination but the learned trial Court treated the cross examination of the complainant as NIL, vide order dated 22.09.2016, Annexure P-4, which is absolutely illegal, unjust and erroneous on the face of it because the date fixed was 21.09.2016 but the matter was taken up on 22.9.2016 instead of 21.09.2016, which resulted into absence of counsel for the petitioner/accused.

3. He further contends that the accused/petitioner challenged the order dated 22.09.2016 in revision (Criminal Revision No.66 of 19.10.2016) before the learned Court of Session at Ludhiana but unfortunately, the counsel for the petitioner again did not appear before the Revisional Court and the revision petition was dismissed vide order dated 11.05.2017, Annexure P-5. Moreover, the accused/petitioner was not informed by his counsel about the dismissal of his revision petition on 11.05.2017. It is further contended on behalf of the petitioner that after dismissal of the revision petition and due to the failure to cross-examine the complainant, the accused/petitioner was convicted and sentenced to undergo rigorous imprisonment for 1 year with fine of Rs.1,000/- by the learned trial Court, vide judgment dated 25.10.2017, Annexure P-6. To challenge the judgment

of conviction and order of sentence, the petitioner preferred an appeal, Annexure P-7, before the court of Session at Ludhiana and also moved an application, Annexure P-8, under Section 311 Cr.P.C. in the appeal to recall the respondent/complainant for cross-examination but the same has been dismissed by the learned Additional Sessions Judge, Ludhiana, vide order dated 09.10.2024, Annexure P-9.

4. It is contended by the learned counsel for the petitioner that the petitioner will suffer great prejudice, if the application of the petitioner to cross examine the complainant, is not allowed and huge irreparable loss will be caused to the petitioner. Therefore, the impugned orders dated 22.09.2016 and 09.10.2024, alongwith the impugned complaint, are liable to be quashed, in the interest of justice.

5. Heard and case file also perused.

6. A perusal of the order dated 22.09.2016, Annexure P-4, goes to show that it has been specifically recorded in the said order that case was called several time again and again since morning but Sh.Abdul Rasheed, Advocate, counsel for the accused did not appear before the court for the purpose of cross-examination of the complainant Anpinder Singh due to which the learned JMIC did not find any ground to adjourn the case for further date and ultimately, the cross examination was treated as NIL, opportunity given.

7. The petitioner preferred Revision Petition against the order dated 22.09.2016, Annexure P-4, however, again his counsel (Sh.Abdul Rasheel, Advocate) did not appear before the learned Revisional Court, on 11.05.2017, and the revision petition was dismissed on that date. The order dated 11.05.2017, Annexure P-5, specifically records "Present : None for the

revisionist". Therefore, the conduct of the petitioner and his counsel remained the same before the Revisional Court also and did not change even after losing the chance of cross-examination of the complainant. The petitioner was supposed to ensure the presence of his counsel for the Revisional Court, by all means but he did not bother at all. Later on, the petitioner was convicted and sentenced by the learned trial Court after holding him the guilty under Section 138 of the Negotiable Instruments Act, vide judgement dated 25.10.2017, Annexure P-6. In this way, the trial of the complaint stands concluded and the order passed in the revision petition has become redundant being merged in the final order passed in the complaint case.

8. As far as the order dated 09.10.2024, Annexure P-9, passed in the Criminal Appeal is concerned, whereby the application under Section 311 Cr.P.C. has been dismissed, this Court does not find any illegality or infirmity in the said order because undoubtedly, there is no provision to record evidence at the appellate stage. The petitioner did not approach the learned trial Court, immediately, after passing order dated 22.09.2016, Annexure P-4, by filing application under Section 311 Cr.P.C. or by moving an appropriate application. Further, the petitioner and his counsel repeated their previous conduct before the learned Revisional Court also which shows that they did not take a lesson from the order dated 22.09.2016, which was passed by the learned trial Court after granting several opportunities to cross-examine the complainant.

9. Moreover, the final judgment of conviction and order of sentence in the complaint case have already been passed and as such, there is no chance or say provision to record evidence after passing of the final

judgment. Learned counsel for the petitioner has failed to produce or refer to any judgment wherein evidence of the complainant has been recorded after passing of final judgment of conviction, during pendency of appeal/revision. Hence, the order dated 09.10.2014, Annexure P-9, does not call for any interference and accordingly, stands upheld.

10. In view of the above discussions and taking into consideration the lackadaisical conduct of the petitioner, this court finds no reason to adopt a lenient approach towards the petitioner, therefore, the present petition fails being devoid of any merits and is hereby dismissed.

06.11.2024
anuradha

(SANDEEP MOUDGIL)
JUDGE

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