SYED ROSHAN ZAMIR ALI

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CGHC010392302026 2026:CGHC:43773

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRMP No. 2623 of 2026

1. Gorelal Banjare S/o Natthu Banjare Aged About 40 Years R/o Kanshigarh, Tehsil Jaijaipur, Distt. Sakti, Chhattisgarh.

... Petitioner

versus

1. Anup Chandra S/o Chhote Lal Aged About 25 Years R/o Bodsara, P.S. And Tehsil Jaijaipur, Distt. Sakti, Chhattisgarh.

... Respondent

For Petitioner : Mr. Ishwar Jaiswal, Advocate

SB: Hon'ble Mr. Justice Parth Prateem Sahu

Order on Board

08.10.2026

1. Petitioner has preferred this petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') feeling aggrieved by closure of his right to lead evidence in defence.

2. Respondent preferred a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short "the Act of 1881') alleging that petitioner herein issued a cheque in favour of respondent towards repayment of amount which he had

borrowed from him to meet his domestic need. When the respondent deposited the cheque for payment, it was dishonoured for want of sufficient fund in bank account of petitioner. Cheque amount is not paid despite service of demand notice and therefore, the a complaint was filed. During pendency of the said complaint based on submission of learned counsel for petitioner that he does not want to adduce evidence in defence, learned Magistrate vide impugned order dated 13.4.2026 closed the petitioner's right to lead defence evidence. Criminal revision preferred against the order dated 13.4.2026 was also dismissed vide order impugned.

3. Learned counsel for petitioner submits that the respondent has been afforded as many as 28 opportunities to adduce evidence in support of his case, whereas right of petitioner (accused) to lead evidence in defence has been closed only after providing seven opportunities. He submits that the learned trial Court has adopted hyper technical approach in the present case whereas it is well settled law that maximum opportunities should be afforded to the parties to prove their case. There is no allegation that the petitioner was in the habit of seeking adjournments and deliberately delaying the proceeding. In the absence of defence evidence, it would be a walkover for the complainant as the petitioner will not have

any chance to adduce defence evidence on his side in rebuttal of the same and the same would cause huge financial loss to petitioner. Denial of such opportunity would cause serious prejudice to his right of defence, hence, one opportunity be granted to the petitioner to lead evidence in defence.

4. Heard learned counsel for the petitioner and perused the documents available in record of petition.

5. Perusal of the record shows that complaint is of the year 2022. Statement of petitioner (accused) under Section 313 CrPC stood recorded on 02.01.2026 and thereafter, opportunity was given to petitioner to lead defence evidence. On 12.1.2026 the matter was fixed for defence evidence, however, on time being sought from petitioner's side, the matter was adjourned for 22.1.2026. Thereafter, the matter was taken up on 22.1.2026, 29.01.2026, 18.02.2026, 19.2.2026, 7.3.2026 for defence evidence but on every occasion time was sought. On 13.4.2026, when the matter was fixed for defence evidence, defence witness Gorelal appeared. During his examination-in-chief, learned counsel for petitioner herein appearing before the trial Court made a submission that he does not want to adduce evidence in defence and prayed for closure of right to lead defence evidence. Accordingly, the trial Court closed the right of

petitioner to adduce evidence in defence and fixed the matter for final arguments.

6. From the proceedings of the trial Court it is clear that after the order dated 2.1.2026 was passed, the petitioner has consistently been taking time to lead his defence evidence. From 2.1.2026, as many as 08 opportunities were granted to the petitioner to lead defence evidence and ultimately on 13.4.2026. Defence witness Gorelal appeared, but during his examination-in-chief, petitioner's counsel appearing before the trial Court has expressed not to lead evidence in defence. Thus, petitioner was accorded opportunity to adduce evidence in defence but he did not avail the opportunity.

7. Once the petitioner's counsel made categorical submission that no defence evidence was to be led, which was not objected by the petitioner himself who was personally present in the Court at that point of time, then it was not expected from the trial Court to adjourn the matter further for defence evidence. The learned Trial Court was justified in proceeding further with the matter and in closing the petitioner's right to lead evidence in defence.

8. Furthermore, the petitioner has not been able to demonstrate before this Court any sufficient cause or compelling circumstance necessitating restoration of right to lead defence evidence, which was voluntarily given up. It is not the case of

petitioner that after closure of right to lead evidence in defence, any new fresh material or evidence, which could not have been produced earlier despite due diligence, has come to light, requiring a further opportunity to adduce defence evidence. In the absence of any such subsequent development or sufficient cause justifying grant of an opportunity to lead defence evidence in facts of the case as discussed above, this Court finds no ground to interfere with the impugned order. Hence, petitioner having made a statement declining an opportunity to lead evidence in defence is not entitled to go back on that statement.

9. It is true that right of an accused to a fair and reasonable opportunity to defend himself is undoubtedly an essential component of a fair trial. However, when such a right is voluntarily waived / given-up by the petitioner, he is not entitled to resile from his decision of not leading defence evidence and claim prejudice arising from his own conduct. He is liable to suffer the consequences of his action.

10. In the result, this petition has no substance, the same is liable to be and is hereby dismissed. No order as to costs.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-