

Criminal Revisional
PRESENT: The Hon'ble Justice Ashim Kumar Roy
Judgment On : 08-02-2010.
C.R.R. No. 187 of 2010
Rajesh Gupta
versus
Sudhir Kumar Chouhan

Point:

Defence evidence: An accused whether be deprived to adduce evidence in his defence- Negotiable Instruments Act,1881- S.138

Fact: The petitioner has been facing a trial in connection with a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act, before the Learned Judicial Magistrate. It is the case of the petitioner that he intended to examine himself as a defence witness, but the Learned Magistrate turned down his such prayer. Hence this application.

Held: The right of an accused to adduce evidence in his defence, is a very valuable right of an accused and ordinarily the accused should not be deprived of his such right. (Paragraph – 5)

For Petitioner : Mr. Navanil De

For Opposite Party: Mr. Mahendra Prosad Gupta

The Court:

1. The petitioner has been facing a trial in connection with a case relating to an offence punishable under Section 138 of the Negotiable Instruments Act, before the Learned Judicial Magistrate, 4th Court, Howrah.
2. It is the case of the petitioner that he intended to examine himself as a defence witness, but the Learned Magistrate turned down his such prayer.
3. Heard the Learned Counsels appearing on behalf of the parties.
4. It appears from the impugned order and other materials on record that the aforesaid case relating to an offence punishable under Section 138 of the Negotiable Instruments Act was instituted on 25th January, 2008 on the basis of a complaint made on that day. Thereafter, the examination of the accused under Section 313 of the Code was held on 16th October, 2009. When the accused expressed his desire to examine the defence witness. It appears from the order sheet that from time to time the accused was given opportunities to examine the

defence witness but he did not avail such opportunities and on the date fixed for argument he moved an application for adducing defence evidence and simultaneously prayed for re-examination of P.W. 1. The Learned Magistrate having found that sufficient opportunities were given to the petitioner to adduce the defence evidence earlier, rejected his such prayer.

5. Be that as it may, having gone through the impugned order, I find that the order impugned does not suffer from any illegality or impropriety. But considering the facts that the right of an accused to adduce evidence in his defence, is a very valuable right of an accused and ordinarily the accused should not be deprived of his such right. Thus, a chance be given to him in that regard to examine defence witness and that would not of course prejudice anybody's case.

However, the question of recalling for re-examination of the P.W. 1 after 313 is over on the prayer of the accused does not at all arise because in such case there would be every possibility of causing prejudice to the complainant whose evidence has already been closed and on the basis of such evidence the accused has been examined under Section 313 of the Code of Criminal Procedure.

For the reasons stated above, I set aside the impugned order and direct that the Learned Magistrate to give the petitioner an opportunity to examine him as a defence witness on the next date fixed for trial. However, the P.W. 1 need not be recall for re-examination.

It has been submitted that the next date fixed for trial is 10th of February, 2010. It is directed on the next day the Learned Magistrate shall fix a suitable date for examination of the defence witness and that too within a period of fortnight. If on that date the petitioner fails to avail this opportunity, Learned Magistrate shall have the liberty to close the evidence and to proceed to the next stage of trial.

I find that the case is pending since January, 2008 and already more than two years have been elapsed which is contrary to the mandate of Section 143 of the Negotiable Instruments Act. The Learned Magistrate is directed to conclude the trial positively within one month from the next date fixed for trial. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible.

(*Ashim Kumar Roy, J.*)