

(2019) 05 SHI CK 0033
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No. 38 Of 2019

M/S Virus Through Its Prop. Sh. Gaurav Walia And Another	APPELLANT
Vs	
Ramesh Jaswal	RESPONDENT

Date of Decision : 28-05-2019

Acts Referred:

Negotiable Instruments Act, 1881 — Section 138, 142
Code Of Criminal Procedure, 1973 — Section 216, 243, 311, 313
Evidence Act, 1872 — Section 45, 73

Citation : (2019) 05 SHI CK 0033

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Amar Deep Singh, Shemmi Heer

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. The controversy involved in this petition is very narrow compass. Proceedings stand initiated against present petitioners by the respondent herein, under Section 138 read with Section 142 of the Negotiable Instruments Act. Despite number of opportunities having been granted by learned trial court to the present petitioners to lead evidence, the same was not led. In the meanwhile, petitioners herein preferred two applications before learned trial court i.e. one application under Section 243 read with Section 311 of the Cr.P.C. along with Section 45 and 73 of the Indian Evidence Acts and another application was filed under Section 216 read with Section 313 of Cr.P.C.

2. The application filed under Section 216 read with Section 313 of Cr.P.C. was dismissed by learned trial court vide Order dated 31.7.2018. While dismissing said application, learned trial court also observed that as four opportunities already stood granted to present petitioners to lead evidence, last opportunity on self responsibility to do so was granted for 18.8.2018.

3. Feeling aggrieved by Order dated 31.7.2018 petitioners filed a Revision Petition before the court of learned Additional Sessions Judge (1) Shimla. Vide order dated 30.10.2018, learned appellate court while issuing notice also stayed the proceedings pending before learned trial court till next date of hearing i.e. 26.11.2018.

4. It appears that as no evidence was again led by present petitioners for 18.8.2018, they were given another opportunity and date for the said purpose was fixed as 30.10.2018.

5. On the said date i.e., 30.10.2018 (wrongly mentioned in the Court order as 29.10.2018), learned trial court closed their right to lead evidence by passing the following order:-

"However, an application for exemption has been moved on behalf of absentee accused, which is considered and allowed for the reasons stated therein for today only. However, the perusal of case file depicts that the case has been listed for the production of the defence witnesses a number of times but neither the steps have been taken by the accused nor he has shown his intention to get anyone examined in his defence. Accordingly, this court is of the view that the matter cannot delay further. Since it is pending trial before this court since the year 2012. Accordingly, this court deems it fit to close the evidence of the accused and listed for arguments for 14.11.2018."

6. Feeling aggrieved, petitioners have filed the present petition.

7. I have heard learned counsel for the parties and have also gone through the impugned order as well as other documents appended with the petition.

8. It is not in dispute that as on 30.10.2018 the Revision Petition preferred by the present petitioner against Order passed by learned trial court dated 31.7.2018 was listed before the Court of learned Additional Sessions Judge(1), Shimla.

9. It is also a matter of record that on the said date, further proceedings pending before learned trial court stood stayed by the learned Revisional Court. It is also a matter of record that the factum of the Revision being listed before the Revisional Court was in the knowledge of learned trial court, as an application filed on behalf of present petitioners for exemption from appearance stood allowed vide impugned order itself by learned trial court. Therefore, because as on 30.10.2018 learned Revisional Court had stayed further proceedings pending before learned trial court, Order passed on the same date by learned trial court closing the evidence of the accused is not sustainable in law. This Court is not going into the merit of the Order passed by learned trial court. The issue is of proprietary and judicial discipline. When on 30.10.2018 the Revisional Court had stayed the proceedings pending before learned trial court, no order could have been passed in the said trial on 30.10.2018 by learned trial court. Impugned Order, therefore, passed by learned trial court dated 30.10.2018 is not

sustainable in the eyes of law.

In view of the above discussion, this petition is accordingly allowed. Impugned Order dated 30.10.2018 vide which learned trial court has closed the right of the present petitioners to lead evidence is set aside with the direction that one more opportunity shall be granted by learned trial court to the present petitioners to lead evidence for a date to be fixed by learned trial court and that too on self responsibility of the present petitioners.