

11

\$~ 11

\*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL.M.C. 2913/2013

PROMINENCE RETAIL AND MARKETING (P) LTD..... Petitioner  
Through: Mr. Manish Kapur, Adv.

versus

SACHIN YADAV & ANR

..... Respondents

Through: Counsel for respondent no.1.

Ms. Jasbir Kaur, APP for State.

**CORAM:**

**HON'BLE MS. JUSTICE VEENA BIRBAL**

**ORDER**

%

**29.07.2013**

1. By way of this petition under Section 482 Cr.P.C read with Article 227 of the Constitution of India, the petitioner has challenged the impugned order dated 04.05.2013 passed by Ld. CMM, Karkardooma Courts, in complaint case No.57/2010 whereby the application of petitioner under Section 311 of the Cr.P.C. for recalling CW1 for cross-examination has been dismissed.

2. Briefly stated the facts leading to the filing of present petition are that as under:-

A complaint under Section 138 of Negotiable Instruments Act has been filed against the petitioner by the respondent herein i.e. complainant before the learned M.M. with the allegations that cheque no.958670 amounting to ₹ 23,53,287/- dated 02.09.2010 drawn upon State Bank of India at its Maharajpur, Bharat Nagar, Ghaziabad Branch, U.P. was issued

CRL.M.C. 2913/2013

Page 1 of 3

Signature Not Verified

Signing Date: 17.09.2024 17:00:46  
Certify that the digital and physical file have  
been compared and the digital data is as per  
the physical file and no page is missing.

2 ✓

by the petitioner company in favour of respondent. As per allegations in the complaint, the said cheque was issued in lieu of his salary dues. Further allegations are that the same was dishonoured by the banker of the petitioner company on 10.09.2010. Thereafter, the respondent/complainant sent a legal notice through his counsel and reply thereto was given by the petitioner. The stand of the petitioner is that the said cheque was never issued towards the salary of the respondent/complainant as is alleged. The stand of the petitioner is that there was theft of cheques and some important documents including the letter heads of the company in the office of the petitioner and the petitioner has already filed a complaint case no.68/2010 under Section 200 Cr.P.C. against the respondent/complainant which is pending before the learned ACJ, Junior Division, Ghaziabad District Court, U.P. The complaint case is pending disposal before Ld.M.M.

3. The grievance is that the trial court has not given the petitioner company sufficient opportunity to cross examine the complainant i.e. CW-1.

4. Learned counsel appearing for respondent/complainant who is present on advance notice has submitted that learned M.M. has given sufficient opportunity and it is the petitioner who has been delaying the matter and as such the learned M.M. has rightly closed his right to further cross-examine CW-1.

5. Ld.counsel for petitioner has submitted that great prejudice shall be caused to the petitioner if he is not allowed to completely cross examine the CW1 in as much as the petitioner will not be able to substantiate its defence.

6. The counsel for respondent No.1 after some arguments has submitted that he has no objection if one opportunity is given to petitioner to cross-examine CW1 subject to costs.
7. I have perused the record and heard the submissions made by the counsel for the parties.
8. The impugned order has serious consequences upon the petitioner as the same is depriving him of having complete opportunity to put forward its defence. In the interest of justice and for effective adjudication of matter on merits the impugned order is set aside subject to costs of ₹10,000/-.
9. The petitioner is given one opportunity to cross examine CW1. The petitioner shall appear on 19.08.2013 before the concerned court and shall pay costs of ₹10,000/- to the respondent no.1. Thereafter, the court shall give date as per its diary for cross examination of CW1. It is made clear that petitioner shall be given only one opportunity to cross examine the CW1.
10. The petition stands disposed of accordingly.

Dasti.

**CRL.M.A.11065/2013 (stay)**

In view of above order, no further orders are required on this application. The same stands disposed of as infructuous.

  
**VEENA BIRBAL, J**

**JULY 29, 2013//srb**

*CRL.M.C. 2913/2013*