

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 31, 2015

1. **CRM-M-16045-2015 (O&M)**

M/s Tosiba Industries Ltd. and others

...Petitioners

Versus

State of Haryana and another

...Respondents

2. **CRM-M-16076-2015 (O&M)**

M/s Tosiba Industries Ltd. and others

...Petitioners

Versus

State of Haryana and another

...Respondents

3. **CRM-M-19920-2015 (O&M)**

M/s Tosiba Industries Ltd. and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. Sahil Sharma, Advocate,
for the petitioners.

Mr. Kuldeep Tiwari, Addl. AG, Haryana,
for respondent No. 1.

Mr. N.S. Shekhawat, Advocate,
for respondent No. 2.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J. (Oral)

This judgment shall dispose of above captioned three petitions, filed by the same petitioners under Section 482, Cr.P.C., challenging identical orders, dated 9.12.2014, passed by learned Judicial Magistrate First Class, Faridabad, in Complaint Case Nos. 2950/2012, 2939/2012, and 2949/2012, all dated 23.8.2012, whereby the applications under Section 311, Cr.P.C., filed by the petitioners for recalling Mr. B.S. Arora (CW-3) for further cross-examination, were declined.

Mr. Sahil Sharma, learned counsel for the petitioners contends that the learned Trial Court has wrongly declined the

prayer of the petitioners to recall Mr. B.S. Arora (CW-3) for further cross-examination. Since material questions could not be put to Mr. B.S. Arora (CW-3) during his cross-examination, therefore, keeping in view the defence of the petitioners, learned Trial Court should have directed him [Mr. B.S. Arora (CW-3)] to appear once again for further cross-examination. He further points out that recalling of Mr. B.S. Arora (CW-3) for further cross-examination, would not prejudice the interests of respondent No. 2/complainant.

On the other hand, Mr. N.S. Shekhawat, learned counsel for respondent No. 2/complainant, submits that three complaints under Section 138 of the Negotiable Instruments Act, 1881, involving huge amount of approximately ₹1,90,00,000/- (Rupees one crore and ninety-lacs only), were filed for prosecution of the petitioners and during trial respondent No. 2/complainant had examined three witnesses including Mr. B.S. Arora (CW-3), who was cross-examined at length (consisting of seven pages) and no question was left over and, as such, learned Trial Court has rightly declined the prayer of the petitioners for recalling Mr. B.S. Arora (CW-3) for further cross-examination. He further points out that as per the information of respondent No. 2/complainant, Mr. B.S. Arora (CW-3), who is working as a Marketing Manager with M/s Narendra Polymers Pvt. Ltd. (respondent No. 2/complainant), is at

the verge of retirement and has been won over by the petitioners and if he is permitted to be recalled for further cross-examination at this stage, then he is likely to demolish the case of respondent No. 2/complainant. He further points out that despite repeated questions by learned Trial Court, the petitioners could not show as to what question was left over in cross-examination of Mr. B.S. Arora (CW-3) and, as such, there is no force in the present petitions and the same may be dismissed. He further points out that the complaints filed by respondent No. 2 are pending adjudication since August, 2012 and the petitioners are adopting dilly-delaying tactics with a view to delay the trial so that the liability of paying huge amount is not fastened upon them. He further points out that before approaching this Court, the petitioners had filed three criminal revision petitions challenging the impugned order before the Sessions Court, but after several months, the same were withdrawn and then the petitioners approached this Court by way of present petitions.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

It is not in dispute that respondent No. 2/complainant has filed three separate complaints for bouncing of different

cheques of approximately ₹1,90,00,000/- (Rupees one crore and ninety-lacs only). After summoning of the petitioners as accused, respondent No. 2/complainant was afforded an opportunity to lead its evidence. Consequently, Sarvshri Akha Ram (CW-1), R.K. Gupta (CW-2) and B.S. Arora (CW-3) were produced by respondent No.2/complainant.

During arguments, learned counsel for the parties have pointed out towards cross-examination of Mr. B.S. Arora (CW-3), which runs into approximately seven pages. Just to satisfy the tenor of the cross-examination, this Court has gone through its contents and finds that after putting the questions from every corner, suggestions were also given in the end and, as such, this Court finds that no question was left by the defence during cross-examination of Mr. B.S. Arora (CW-3). There appears to be genuine apprehension of respondent No. 2/complainant that if Mr. B.S. Arora (CW-3) is recalled for further cross-examination, then he might demolish its (complainant's) case by giving answers which are adverse to the interests of respondent No. 2/complainant.

There is no doubt that if the Court deems necessary that recalling of a particular witness is necessary for the interest of justice and just decision of the case, then without any hesitation the Court may order for recalling of the said witness. But in the case in

hand, it appears that intention of the petitioners is *mala fide* and with such intention applications for recalling Mr. B.S. Arora (CW-3) were moved and which were rightly declined by learned Trial Court vide impugned orders dated 9.12.2014 and, as such, this Court while exercising the jurisdiction under Section 482, Cr.P.C., does not deem it fit to set aside the well reasoned order passed by learned Trial Court.

As a sequel to the above discussion, all the three captioned petitions are dismissed.

A copy of this judgment be placed on the files of connected petitions.

October 31, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE