

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**Criminal Misc. No. M-34631 of 2015 (O&M)
Date of decision: 13.10.2015**

M/s Sachin Goyal properties and Leasing (P) Ltd.
and others ..Petitioners

Versus

Ravinder Kumar Gupta ..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

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

Daya Chaudhary, J.

CRM-33823 of 2015

This application is for placing on record *zimni* orders as
Annexure P-4 (colly).

Application is allowed and Annexure P-4 (colly) is taken on
record.

CRM-M-34631 of 2015

The present petition has been filed under Section 482
Cr.P.C. for setting aside the order dated 20.08.2015 passed by
Judicial Magistrate Ist Class, Ludhiana, whereby, defence evidence of

the petitioners has been closed by Court order.

Briefly, the facts of the case as made out in the petition are that the respondent filed a complaint under Section 138 of the Negotiable Instruments Act against the petitioners on the allegations that the complainant gave a cash loan of ₹10,00,000/- to the petitioners on 21.08.2013 to discharge their legal liability and a post-dated cheque bearing No.632861 dated 21.08.2013 amounting to ₹10,00,000/- drawn from State Bank of Patiala, Ludhiana was also issued. The said cheque was presented by the complainant for encashment and it was dishonoured vide memo dated 02.09.2013 with the remarks "Today's opening balance insufficient". The petitioners were summoned in the complaint case, furnished their bail/surety bonds and were attending the Court proceedings.

Statements of the accused were recorded under Section 313 Cr.P.C. Thereafter, an application for summoning the defence witnesses was moved, which was allowed but defence witness did not appear in the Court. Vide order dated 20.08.2015, the defence evidence of the petitioners was closed by the Court order, which is subject matter of challenge in the present petition.

Learned counsel for the petitioners submits that the impugned order is liable to be set-aside. The respondent wanted to summon Devki Nandan to prove that the post-dated cheque was given to the complainant as advance payment against supply of iron goods by the complainant to the petitioner. The father of complainant

was partner of the firm and did not appear deliberately before the Court and he denied this factum of advancing any loan to the petitioners. Learned counsel also submits that the trial Court has closed the defence evidence of the petitioners by order without any fault on their part whereas statement of witness Devki Nandan is necessary for the petitioners to prove their case before the trial Court.

Heard arguments of learned counsel for the petitioners and have also perused the impugned order and other documents on the file.

On perusal of impugned order, it is apparent that the case was fixed for defence evidence of the accused-petitioners but no defence evidence was produced inspite of affording various opportunities and even the statement under Section 313 Cr.P.C. was also recorded on 09.12.2014. Thereafter, many opportunities were granted to the petitioners to conclude their defence evidence but till date of passing the impugned order, the respondent failed to conclude their evidence and no plausible explanation was put forth before the trial Court as to why the defence evidence could not be produced.

On perusal of *zimni* orders, it is apparent that the case was adjourned on 27.02.2015, 19.03.2015, 08.04.2015, 27.04.2015, 01.05.2015, 13.05.2015, 20.05.2015, 02.06.2015, 06.07.2015, 23.07.2015, 03.08.2015, 07.08.2015 and 20.08.2015 for defence evidence but inspite of affording so many opportunities, no defence witness was produced. Otherwise also, nothing has been mentioned

as to how the examination of father of complainant was necessary. Moreover, this application has been moved after recording of statements under Section 313 Cr.P.C.

In view of the facts as mentioned above, no interference is required with the impugned order and as such, the present petition being devoid of any merit is, hereby, dismissed.

13.10.2015
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(DAYA CHAUDHARY)
JUDGE