

\$~8

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: July 10, 2015

+ CRL.M.C.3307/2013 & CRL.M.A.12236/2013

SUSHIL KUMAR AGGARWALPetitioner

Through: Mr. Rajesh Kumar, Advocate

versus

AJAY INDUSTRIAL CORPORATION LTD.

& ANR. Respondents

Through: *Counsel (appearance not given)*

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

In a complaint under Section 138 of *Negotiable Instruments Act, 1881*, petitioner's application under Section 145(2) of Act, stands dismissed vide order of 25th July, 2013 while noting the stand taken by petitioner. The reason for declining petitioner's application under Section 145(2) of *Negotiable Instruments Act, 1881* put forth by trial court is that no ground or point on which complainant has to be cross-examined has been mentioned in the application and without disclosing the defence, accused cannot be permitted to cross-examine the complainant.

At the hearing, learned counsel for petitioner had submitted that in Notice framed under Section 251 Cr.P.C., the defence of petitioner is

clearly put forth and so rejection of petitioner's application leads to miscarriage of justice.

Learned counsel for respondent-complainant drew the attention of this Court to the Settlement of 18th September, 2010 to submit that there was an outstanding amount towards petitioner as ₹11 lac odd and the same was to be paid by petitioner to respondent with liberty to petitioner to return some of the material supplied and the amount of the returned material was to be adjusted.

During the course of hearing, learned counsel for respondent-complainant had drawn the attention of this Court to a letter of 23rd September, 2010 (*Annexure P-6*) to submit that return of the goods was to be done by JV Retails Private Limited and not by petitioner. At this stage, learned counsel for petitioner submits that JV Retails Private Limited is a sister concern of petitioner.

Upon hearing and on perusal of the impugned order, Notice framed under Section 251 Cr.P.C., the Settlement (*Annexure P-4*) and letter dated 23rd September, 2010 (*Annexure P-6*), I find that it is not a case where petitioner has no material, on which respondent-complainant has to be cross examined. Literal insistence upon spelling out the points on which cross examination has to be conducted cannot be appreciated as the stand taken by petitioner in Notice under Section 251 of Cr.P.C. makes out a case for cross examination of respondent-complainant. Thus, rejection of petitioner's application under Section 145(2) of *Negotiable Instruments Act, 1881* is unwarranted. For the delay occasioned, petitioner can always be put to terms.

Consequently, impugned order of 25th July, 2013 is hereby

quashed subject to cost of ₹50,000/- to be paid to respondent-complainant at the time of cross-examination before trial court.

Parties to appear before the trial court on the date already fixed.

The petition and application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 10, 2015

vn