

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

Date of Decision-12.09.2017

1. CR No.7471 of 2015

M/s Trimurti Construction Developers and Builders and others
... Petitioners

Versus

State of Haryana and others ... Respondents

2. CR No.489 of 2016

M/s Trimurti Construction Developers and Builders and others
... Petitioners

Versus

State of Haryana and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Manoj Bajaj, Advocate with
Ms. Jagriti Kalia, Advocate
for the petitioners.

Mr. Ashwani Kumar Saini, DAG, Haryana.

RAJ MOHAN SINGH, J.

[1]. Vide this common order, CR No.7471 of 2015 titled M/s Trimurti Construction Developers and Builders and others Vs. State of Haryana and others and CR No.489 of 2016 titled M/s Trimurti Construction Developers and Builders and others Vs. State of Haryana and others are being disposed of.

[2]. In CR No.7471 of 2015, order dated 05.10.2015 passed by Civil Judge (Senior Division), Rohtak has been assailed vide

which cross examination of PW 1 was treated to be *nil* at the instance of defendants/petitioners.

[3]. In CR No.489 of 2016, order dated 23.12.2015 passed by Civil Judge (Senior Division), Rohtak has been assailed vide which cross examination of PW 3 was treated to be *nil* at the instance of defendants/petitioners.

[4]. Facts are being taken from CR No.7471 of 2015.

[5]. Brief facts are that plaintiffs invited tenders for construction of various Government buildings including the construction of District Jail at Rohtak. Defendants/petitioners were successful in the process of tenders and were allotted the work assignment. An agreement was executed. Defendants were also allotted two other work assignments for construction of OPD Block as well as construction of new Trauma Centre, Dental Centre, Mother and Child Block, PGIMS, Rohtak. Necessary formalities of bilateral agreement were fulfilled. After elaboration of the work, the construction started and the plaintiffs paid mobilization at once for the project to the tune of 5% of the total cost of the project. Bank guarantees furnished by the defendants were verified by the plaintiffs from the bank and no abnormality was detected till expiry of two bank guarantees on 19.08.2008 and the defendant-Firm was required to get the same extended. At this juncture, the plaintiffs were allegedly informed by the bank that the bank guarantees were not issued by the bank. By that time, the plaintiffs recovered the

amount from the running bills of the defendants. Defendants in order to cure the defect, furnished fresh bank guarantees on 01.10.2008 and 24.10.2008. The construction work was in progress and the bank guarantees were replaced by the defendants with the new bank guarantees.

[6]. The department through plaintiff No.3 got the FIR registered against defendants No.2 to 4, Bank Manager and Manager of defendant No.1/Company for the offences under Sections 406, 420, 467, 468, 471, 120-B IPC at Police Station Urban Estate, Rohtak. The contract was terminated at the mid stage and the construction material was also confiscated. The case was investigated, wherein statement of Sukhbir Singh, Executive Engineer, PWD (B&R) was recorded under Section 161 Cr.P.C on 21.11.2008 to the effect that the loss of the Government has been made good. Challan was presented against defendant No.2/Rajiv Ranjan Kumar, partner of the construction company, whereas defendants No.3 and 4 i.e. Smt. Anuradha Priyadarshini and Santosh Kumar were found to be innocent. The police did not file any challan against N.K. Tomar (Bank Manager) and Viney Vishal, Manager of defendant No.1. These two managers were granted anticipatory bail by the High Court as well as by the Hon'ble Supreme Court. A criminal case is pending. In addition to the criminal case, plaintiffs filed a suit for recovery to the tune of Rs.5,36,89,197/- along with interest against the defendants for the

breach of contract in respect of construction of aforesaid assignment. Other two suits were separately filed for remaining two work assignments at PGIMS, Rohtak.

[7]. After settlement of issues, the evidence of the plaintiffs started. Examination-in-chief of PW 1 was adduced by way of affidavit Ex.PW1/A and the cross examination of the witness was deferred on the request of learned counsel for the defendants vide order dated 21.07.2015. The cross examination of the witness could not be done for one reason or the other till 29.09.2015 when the Court noticed that defendants have devised to delay the proceedings by not placing power of attorney and not conducting the cross examination. The case was adjourned to 05.10.2015 for evidence of the plaintiffs. PW 1 was discharged and was bound down to appear on the next date of hearing with complete record.

[8]. Learned counsel for the petitioners submitted that vide order dated 27.02.2015 passed by the High Court in CRM Nos.6601-03 in CRR No.2694 of 2014, framing of charge against Anuradha Priyadarshani and another was stayed. Petitioners No.2 to 4 were sought to be served with the process of civil suits in the criminal case. For that, an application was moved by Raj Kapoor (S.D.E) through Public Prosecutor.

[9]. On 05.10.2015, one PW namely Pardeep Ranjan (S.E) was present in the Court for cross examination, however, an application was moved on behalf of the defendants signed by Sh.

V.P. Dua, Advocate and Sh. Abhishek Sharma, Advocate, wherein it was mentioned that a transfer application was pending before the District Judge, Rohtak on 03.10.2015 and the Court may defer the proceedings till passing of appropriate orders by the District Judge. Since no stay was granted by the District Judge and the witness was present in the Court, the statement of the witness was recorded and the cross examination was to be conducted upon him. None appeared on behalf of the defendants and one more application was filed through Sh. V.P. Dua, Advocate maintaining that his client has directed him not to appear in the trial Court and he requested for adjournment. Court proceeded to treat the cross examination of the witness to be *nil* at the instance of the defendants vide order dated 05.10.2015 after noticing certain facts on record.

[10]. An application under Section 24 CPC was filed for transfer of the suit from the Court of Civil Judge (Senior Division) to some other Court by referring to the proceedings done in the Court on 24.08.2015 and 29.09.2015. On the adjourned date i.e. 05.10.2015, the impugned order came to be passed.

[11]. Learned counsel for the petitioners by referring to the orders passed in the criminal case tried to highlight the fact that though personal appearances of accused Anuradha Priyadarshani and Santosh Kumar have already been exempted by the High Court till further orders, but Civil Judge, Senior Division exercising the powers of Additional Chief Judicial Magistrate, on 30.01.2015,

adjourned the case to 07.02.2015 for presence of the aforesaid accused as well as consideration on charge. On 07.02.2015, an application for exemption from personal appearances of Anuradha Priyadarshani and Santosh Kumar was moved before the Additional Chief Judicial Magistrate, Rohtak on the ground that their personal appearances have been exempted by the High Court. It was also prayed that a criminal revision petition has been preferred by these two accused and the proceedings be deferred as they have already sought discharge in the said criminal revision petition. The request was not entertained as there was no stay granted by the High Court and the Court adjourned the case on 07.02.2015 to 21.02.2015 for arguments on charge.

[12]. On 21.02.2015, an application was filed on behalf of accused Rajeev Ranjan for exemption from personal appearance and the same was allowed only for the said date i.e. 21.02.2015 and the case was adjourned to 23.02.2015. The same exemption was also accorded on 23.02.2015 and the case was adjourned to 25.02.2015. No arguments on charge were made on 25.02.2015 and the case was adjourned to 09.03.2015 for consideration on charge. In the meanwhile, the order dated 27.02.2015 was passed by the High Court in CRM Nos.6601-03 in CRR No.2694 of 2014 and interim order was granted to the effect that the trial Court shall not frame charge against the petitioners therein.

[13]. Learned counsel submitted that on 09.03.2015, an application for exemption from personal appearance was moved by Rajeev Ranjan on the ground that he was suffering from flue and was being investigated for swine flue. The application was rejected. Bail of Rajeev Ranjan was cancelled by forfeiting the bail bonds to the State and he was ordered to be summoned by non-bailable warrants for 04.04.2015. The factum of order dated 27.02.2015 passed by the High Court was noticed and the case was adjourned to 04.04.2015 for pronouncement of the order with regard to framing of charge against the accused persons.

[14]. The transfer application filed by the petitioners before the District Judge was dismissed and the petitioners remained unsuccessful before the High Court as well. Learned counsel for the petitioners by referring to the stages of criminal case and the orders passed by the Presiding Officer submitted that there was a reasonable apprehension in the mind of the petitioners and that is why, they sought transfer of the case.

[15]. The apprehension of the petitioners may or may not be sufficient for transfer of the case from one Presiding Officer to other, but I am of the view that cross examinations of PW 1 and PW 3 could have been done by the defendants. The Court has been informed that the Presiding Officer has already been transferred. In order to give fair chance to the defendants/petitioners and without embarking upon the merits of the case, I am of the considered

opinion that *de hors* the proceedings undertaken by the criminal Court as well as by the Civil Judge in the present proceedings, one more last opportunity is required to be given to the defendants/petitioners to cross examine the witnesses i.e. PW 1 and PW 3 subject to payment of cost of Rs.20,000/- to be deposited in Legal Services Authority at Rohtak. Payment of cost shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

[16]. A photocopy of this order be placed on the file of connected case.

**(RAJ MOHAN SINGH)
JUDGE**

12.09.2017
Prince

Whether reasoned/speaking	Yes/No
Whether Reportable	Yes/No