

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

**CRM-M-23569 of 2017
Date of decision:-10.8.2017**

Vikas Walia

...Petitioner

Versus

Ashok Mittal

...Respondent

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.P.S. Poonia, Advocate
for the petitioner.

Mr.Suvir Sidhu, Advocate
for the respondent.

H.S. MADAAN, J.(ORAL)

This petition under Section 482 Cr.P.C. for quashing of order dated 11.4.2017 passed by Judicial Magistrate Ist Class, Chandigarh in criminal complaint No.696 of 16.1.2015 under Section 138 of Negotiable Instruments Act read with Section 420 IPC titled *Ashok Kumar Versus Vikas Walia and another* has been filed by petitioner Vikas Walia, an accused in the said complaint challenging the order vide which his application under Sections 145 & 155 of Evidence Act for summoning record at the time of cross-examination of complainant had been dismissed.

Briefly stated, facts of the case are that complainant Ashok Mittal had brought the complaint in question against accused Vikas Walia and his wife Vernika Walia on the allegations that he had paid a

sum of Rs.12.25 crores to accused in cash as well as through RTGS etc. towards oral partnership in the business of purchasing diamond and diamond jewellery from Surat (Gujarat) and selling the same in Chandigarh and satellite towns since the accused had given an allurements to the complainant that in that business huge profit could be earned. The complainant was further allured by the accused to invest Rs.22 crores in the partnership business at Elante Mall, Chandigarh, however, the partnership could not blossom and was ultimately dissolved vide dissolution deed dated 23.2.2014, in terms of which the accused agreed to keep the showroom at Elante Mall with them and to pay Rs.17 crores to complainant. In pursuance thereof, the accused issued many cheques in favour of complainant towards discharge of their financial liability giving an assurance that same would be encashed on presentation but things happened otherwise and cheque No.868361 dated 15.8.2014 amounting to Rs.1 crore drawn on Punjab National Bank, Sector-22, Chandigarh so given to complainant by the accused on account of partial discharge of their liability was dishonoured due to insufficient of funds in the account of accused. On receipt of information, complainant served legal notices dated 1.12.2014 upon the accused as regards each cheque calling upon them to make payment of the cheque amount within 15 days of receipt of notice but to no effect, as such he (complainant) had filed the criminal complaint in the Court of law.

The accused were summoned and they put in appearance. Notice of accusation was served upon them and case was fixed for evidence of complainant. Examination-in-chief of complainant was

recorded and then his cross-examination on behalf of accused was started and during the course of that the accused moved an application for summoning record contending that on the allegations contained in the complaint, the complainant had got registered FIR No.517 dated 7.11.2014, under Sections 406, 420, 467, 468, 471, 120-B, 506 and 387 IPC, registered at Police Station Sector-5, Panchkula as well as FIR No.114 dated 23.4.2015, under Sections 406, 419, 420, 467, 468, 471 and 506 IPC, registered at Police Station Industrial Area, Chandigarh. Those cases were investigated and cancellation reports were submitted though when such reports were filed, the Court had ordered further investigation which is under way; that a complaint was moved before Chandigarh Police and police had registered FIR No.410 dated 16.10.2015, under Sections 420, 467, 468, 471, 120-B IPC, registered at Police Station Sector 17, Chandigarh, which is under investigation. In addition to that, complainant had submitted written complaints/representations in all the three FIRs, where FIRs were recorded, therefore the accused wanted to confront the complainant with such complaints/representations/statements so made by him as well as with dissolution deed dated 20.2.2014, affidavits etc., which are in custody of the police officers investigating the case.

After getting reply, the trial Court dismissed the application vide a detailed order dated 11.4.2017. The trial Court has observed that the accused have failed to state the name of person, whose statement was allegedly recorded, date of said statements/complaints/representations. It has further been noticed that examination-in-chief of complainant CW1 - Ashok Mittal was recorded

on 12.2.2016 and thereafter accused has availed of more than 10 opportunities for cross-examination of CW1 but have failed to conclude the cross-examination; that copies of FIRs can be obtained from the Court of learned Illaqa Magistrate or concerned police stations and since the investigation is still pending and if the record of the said FIRs is called that would amount to interference in investigation. It has further been noticed that since FIRs have been lodged against and by the accused and accused themselves are in possession of FIRs, those could be put to the witness during cross-examination, therefore no ground was made out to call record of FIRs; that documents Ex.C2 and Ex.C3 have already been produced on record and documents Ex.D1 to Ex.D15 were got produced on record by the accused at the time of cross-examination of complainant and further that whether those documents are forged or fabricated, that fact could be decided only on merits at the time of final adjudication and that accused can produce the original of the same on record at the time of his evidence.

I find the order to be well reasoned one. From the record, one thing becomes apparent that the accused want to stretch the proceedings by getting adjournments for one reason or the other. It is quite surprising that they have been asking for adjournments for such like reasons and trial Court has been granting those adjournments quite liberally, when as per instructions by this Court on administrative side adjournments are to be granted for justifiable reasons and not in routine. The order passed by the trial Court is well reasoned one. There is no legality or infirmity therewith, rather the instant petition seems to have been filed as a delaying tactics, which tendency needs to be curbed. The

trial Court was justified in dismissing the application so moved by the accused for summoning of the record since valid reasons for doing so have been given.

Finding no merits in the petition, the same stands dismissed.

10.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No