

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM No. M-32530 of 2016
Date of decision: 14.07.2017

M/s J.K. Enterprises

...Petitioner

Vs.

M/s India Bricks Industries

...Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Shri Nitin Kumar, Advocate for the petitioner(s).

Mr. Shiv Kumar, Advocate for the respondent.

HARI PAL VERMA, J.(ORAL)

M/s J.K. Enterprises, the petitioner has filed the present petition under Section 482 Cr.P.C. seeking quashing of the order dated 12.08.2016 (Annexure P-2) passed by Ld. JMIC, Faridabad and order dated 29.08.2016 (Annexure P-4) passed by Additional Sessions Judge, Faridabad whereby application of the petitioner under Section 311 Cr.P.C. for summoning the witnesses, has been dismissed in a complaint filed by the respondent-complainant under Section 138 Negotiable Instruments Act.

Petitioner being an accused, moved an application under Section 311 Cr.P.C. for summoning of the witnesses namely Sanjiv Kumar Jain and Jyoti Bhatt. It has been pleaded that due to negligence of the previous counsel the necessary material witnesses could not be examined.

The said application was contested by the respondent-complainant on the ground that the accused has already been granted ample opportunities for concluding defence evidence and filing of the present petition is just an attempt to delay the proceedings.

After arguing for sometime, the counsel for the petitioner has confined his prayer only to examine Jyoti Bhatt who is the Manager of

accused Firm. He has further argued that no doubt the petitioner has been granted adequate opportunities but since the previous counsel has failed to examine these material witnesses, the petitioner should not suffer for such laxity on part of the counsel.

Learned counsel for the respondent has argued that ample opportunities were granted to the petitioner, but he failed to complete his evidence and his evidence was closed on 16.07.2016. Under the garb of one additional opportunity, he wants to fill up the lacuna.

I have heard counsel for the parties.

The provisions of Section 311 Cr.P.C. are liberal in nature. This Court finds that there were sufficient opportunities with the petitioner to examine the said material witness, but he has failed to do so. Change of lawyer is also no good ground to give one more opportunity. But taking into consideration the fact that petitioner has prayed for one last opportunity to examine the material witness and the petitioner being accused his prayer arises some substance. Further he is ready to pay the cost as observed by this Court in order dated 15.09.2016.

Therefore, in the peculiar facts and circumstances of the case, and adhering to the spirit of order dated 15.09.2016 passed by this Court, the petitioner is granted one effective opportunity to examine Jyoti Bhatt subject to payment of ₹20,000/- to be paid to the respondent-complainant at the time of examining the said witness. It is made clear that the petitioner shall be granted only one effective opportunity.

Disposed of.

(HARI PAL VERMA)
JUDGE

July 14, 2017

Poonam (II)

Whether speaking/reasoned:

Yes

Whether reportable

Yes/No