

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

CRM No.M-40203 of 2015 (O&M)

Date of Decision: July 24, 2017

Mukesh Jain and another

...Petitioners

VERSUS

Oriental Bank of Commerce

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dinesh Maurya, Advocate for
Mr.Anil Goel, Advocate
for the petitioners.

Mr.Anil K.Ahuja, Advocate
for the respondent.

INDERJIT SINGH, J.

Petitioners have filed this petition under Section 482 Cr.P.C. for setting aside the orders dated 31.10.2015 and 07.11.2015 passed by learned Chief Judicial Magistrate, Sonapat, dismissing the application filed by the petitioner under Section 311 Cr.P.C.

Notice of motion was issued. Learned counsel for the respondent appeared and contested the petition.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that a complaint was filed by the Oriental Bank of Commerce against M/s Om Lubricants through Shri

Mukesh Jain, its Director, Mukesh Jain, Sanjay Jain and other accused

under Sections 379, 406, 417, 418, 420 read with Sections 120-B and 149 IPC. During the pendency of the trial, CW-1 Ratnesh Kumar Gupta, Senior Manager, Oriental Bank of Commerce, has been examined and he was recalled for cross-examination in after charge evidence. He was cross-examined by Sh.V.S.Lathar, counsel for accused accused No.3 and 7, Mukesh Jain for accused No.1 and 2 and Sh.Dharambir Sharma, for accused No.9 and 10 on 31.10.2015. CW-2 Harish Narang, AGM was also further cross-examined on that day and cross-examination was deferred due to lunch break and after lunch also, he was cross-examined. The statements Annexures P-2 and P-3 show that petitioner Mukesh Jain, on his behalf and on behalf of the company, cross-examined the witnesses. As per order Annexure P-4, which is dated 31.10.2015, it was recorded by the Court that the case was fixed for after charge evidence of complainant qua accused Nos.1 to 3, 7, 9 and 10. Accused No.2 Mukesh Jain was asked as to whether he has a counsel to cross-examine the witnesses in after charge evidence and he stated at bar that he would cross-examine the witness himself. It is further in the order that two CWs namely Ratnesh Kumar Batra and Harish Narang are present for their further cross-examination in after charge evidence. Part cross-examination of CW-2 Harish Narang has been recorded and his further cross-examination has been deferred due to lunch and it is ordered that file be put up after lunch hours for further cross-examination of CW-2 Harish Narang as well as CW-1 Ratnesh Kumar Batra.

Another detailed order has been passed on 31.10.2015, where the Court held that statements of CW-1 and CW-2 have been recorded.

Ratnesh Kumar Batra stated at Bar that he wants to further cross-examine CW-1 Ratnesh Kumar Batra with a counsel as some questions have been left out. Accused No.2 Mukesh Jain, who is authorized person of accused No.1-company has cross-examined CW-1 with the help of Sh.V.S.Lather, Advocate for accused No.3 and 7 but he did not raise any objection while closing the evidence of CW-1 and raised objection after putting signatures by said witness on his testimony. Therefore, the oral request of accused No.2 Mukesh Jain to further cross-examine the witness was declined. Later on, an application was filed on behalf of Mukesh Jain and Sanjay Jain under Section 311 Cr.P.C.for recalling CW-1 Ratnesh Kumar Batra and CW-2 Harish Narang for their cross-examination.

Learned CJM, Sonapat, after passing detailed order, dismissed the application. The Court discussed all the facts that the witnesses have been duly cross-examined by petitioner Mukesh Jain and also by counsel for Sanjay Jain. A detailed cross-examination is there.

I have perused the impugned orders passed by the Court below. The orders have been passed as per law and no illegality has been committed while passing the impugned orders. When the witness has been recalled for further cross-examination and has been cross-examined in detail and the statements showing the presence of all the counsel for other accused and the petitioner are there, now it cannot be stated that they were not given opportunity to cross-examine or they have not cross-examined the witnesses. It is in the order of the Court that specifically Mukesh Jain was asked whether he wants to engage any counsel or not and he stated that he will cross-examine the witnesses himself. There is presumption to the

even on that date when the statements have been recorded.

In view of the above discussion, I find that no ground is made out for recalling the witnesses CW-1 and CW-2 and learned CJM, Sonapat, has correctly dismissed the application under Section 311 Cr.P.C.

Therefore, finding no merit in the present petition, the same is dismissed.

July 24, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No