

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-46222-2017

Date of decision: 15.12.2017

KSM Spinning Mills Ltd & Others. Petitioners

Versus

M/s. Sushil Kumar Munish Kumar ...Respondent

2. CRM-M-46638-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

3. CRM-M- 47818-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

4. CRM-M- 47829-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

5. CRM-M- 47841-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

6. CRM-M- 47846-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish Kumar ...Respondent

7. CRM-M- 47857-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

8. CRM-M- 47875-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

9. CRM-M-47884-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish Kumar ...Respondent

10. CRM-M-47976-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

11. CRM-M-48019-2017

KSM Spinning Mills Ltd & Others ...Petitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

12. CRM-M-47816-2017

KSM Spinning Mills Ltd & OthersPetitioners

Versus

M/s. Sushil Kumar Munish KumarRespondent

CORAM: HON’BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. S.D. Bansal, Advocate, and
Mr. Bhritu Dutt Sharma, Advocate,
for the petitioners.

Mr. Aakash Singla, Advocate,
for the respondent.

HARI PAL VERMA, J.(Oral)

By this common order, CRM-M-46222-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-46638-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47818-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47829-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47841-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47846-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47857-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47875-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47884-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-47976-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) CRM-M-48019-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) and CRM-M-47816-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar) are being disposed of as same have been preferred between same set of parties and are against the similar orders dated 29.11.2017 passed by learned Judicial Magistrate 1st Class, Hisar.

However, for the sake of brevity, the facts are being taken from CRM-M-46222-2017 (KSM Spinning Mills Ltd & Others versus M/s. Sushil Kumar Munish Kumar).

On notice of motion having been issued in CRM-M-46222-2017 Mr. Aakash Singla, Advocate has put in appearance on behalf of respondent and filed power of attorney in court today, which is taken on record. He has also accepted the notice on behalf of respondent in all other petitions and filed power of attorney, which are taken on record.

Briefly stated, respondent-complainant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') with the allegation that petitioners-accused have been purchasing cotton S-6 R.G-92# from the complainant on credit from Hisar and they have been making part payments in this regard. All such transactions are recorded in the books of accounts maintained by the complainant in the regular course of business. As per these books of accounts, a sum of Rs.1,92,20,672/- was due towards the accused as on 17.08.2015. Against the above said outstanding liability, the accused had issued an account payee cheque No.393325 dated 17.12.2015 for a sum of Rs.16,88,257/- from its account with State Bank of Patiala, Doraha District Ludhiana in favour of the complainant with an assurance that this cheque shall be cleared by the bank as and when presented after 31.12.2015. When the complainant presented the said cheque in its account on 06.02.2016 with State Bank of India, New Grain Market, Hisar, the same was returned by the Bank of the accused with the remarks '*Insufficient Funds*'. Dishonour of cheque led to filing of complaint (s) under the Act against the petitioners-accused which is pending before learned Magistrate, Hisar.

Vide impugned order dated 29.11.2017 (Annexure P-12) passed by learned Judicial Magistrate 1st Class, Hisar, the defence evidence of petitioners in respect of witnesses 'A', 'B' and 'C' as mentioned in the list of witnesses was closed by the court order. The petitioners in their defence, sought to summon the following witnesses:-

- "A. *Sh. Sarish Mittal*
- B. *Sh. Sandeep Kumar, R&D Inspector,*
- C. *Criminal Ahlmad of the JMIC Ludhiana where Criminal Complaint filed by the petitioners is pending*
- D. *Lab Incharge, Indian Cotton Association, Bathinda."*

Learned counsel for the petitioners contends that on 29.11.2017,

out of two witnesses, who were served in the case, only one witness, namely Sarish Mittal, appeared before the Magistrate, while the other witnesses namely, Shri Sandeep Kumar, R&D Inspector did not appear, inspite of service. Criminal Ahlmad of the Court of J.M.I.C. Ludhiana and Lab Incharge of Indian Cotton Association, Bathinda, did not appear before the learned Magistrate for want of service. The cross-examination of witness Sarish Mittal could not be completed on 29.11.2017 as court time was over and case was adjourned to 30.11.2017 for further cross-examination of this witness. However, the defence of the petitioners qua the remaining three witnesses was closed by court order. He states that list of witnesses was duly filed in the court on 07.09.2017 and since public witnesses need to be examined, therefore, petitioners cannot be held responsible for their non-appearance. He submits that one effective opportunity be given to petitioners to conclude their entire defence evidence. The petitioners are ready to compensate respondent-complainant by way of adequate costs.

Mr. Singla, learned counsel appearing for the respondent-complainant states that the petitioners were given ample opportunities to conclude their evidence but they failed. They are trying to prolong the trial. He further states that respondent-complainant is still ready to cooperate with the petitioners, provided they conclude their evidence on one effective date and they should not be allowed to delay the proceedings.

I have heard learned counsel for the parties.

The provisions enshrined in the Code of Criminal Procedure have been enacted with a definite purpose so as to ensure a fair trial and grant of reasonable opportunity with the underlying principle that no one should be condemned unheard. The object of recording the statement of the accused under Section 313 of the Cr.P.C. is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating

circumstances appearing against him in the evidence of the prosecution.

The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith, the court also has to keep in mind that the accused gets a fair chance to explain his conduct but does not delay the proceedings unnecessarily. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is to what extent and consequences such statement can be used during the enquiry and the trial. These are basis of principles of natural justice.

In the present case, though opportunities were granted to the accused to lead their evidence in defence, but they failed. Perusal of the paper book shows that the learned Magistrate has closed the defence of petitioners-accused by court order, twice i.e. firstly on 10.11.2017 and secondly on 29.11.2017. Learned counsel for the petitioners has undertaken to conclude the entire defence evidence in one effective opportunity and at the same time to compensate the complainant.

Accordingly, all the petitions are allowed, order dated 29.11.2017 passed by the learned Judicial Magistrate 1st Class, Hisar is set aside and petitioners-accused are granted only one effective opportunity, in

each case, to conclude their evidence. This shall, however, be subject to payment of costs of Rs.10,000/- in each case, which shall be a condition precedent for grant of one effective opportunity.

It is for the trial Court to give one effective opportunity on a single date or on different dates as per its convenience and the parties shall not question such decision of the trial Court. It is made clear that in case, the petitioners fail to complete their evidence in one effective opportunity, the trial Court shall be fully empowered to close the evidence.

Mr. Bansal, learned counsel for the petitioners undertakes that the petitioners shall not delay the trial in any manner and complete their evidence in one effective opportunity.

The parties are accordingly directed to appear before the trial Court on 21.12.2017, i.e. the date already fixed, on which date, the trial Court shall fix the date for recording of evidence as indicated hereinabove. The service on the witnesses would be the responsibility of the petitioners. However, the trial Court shall give *dasti* summons to them for service of witnesses required to be examined by defence. The witnesses would be served by *dasti* process only and at least one week prior notice be served upon those witnesses required to be examined.

At this stage, learned counsel for respondent-complainant states that complainant is not interested in cost, rather he is interested in early conclusion of trial. He on instructions from respondent-complainant submits that complaint would be satisfied in case costs so imposed upon the petitioners-accused, be deposited with Devi Bhawan Gaushala, Hisar.

Ordered accordingly.

Petitioners shall deposit the costs with Devi Bhawan Gaushala, Hisar before availing the opportunity and receipt thereof shall be submitted before the learned trial Court.

A photocopy of this order be placed on the files of other connected cases.

(HARI PAL VERMA)
JUDGE

15.12.2017
SANJEEV

Whether speaking/reasoned	Yes/No.
Whether Reportable:	Yes/No.