

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment delivered on: 01th December, 2017**

CRL.M.C. 2463/2013 & CRL.M.A. Nos. 9529/2013, 14694/2015

1. VENU MADHAVA K
 2. M/s FOUR SEASONS ENERGY VENTURES PVT. LTD.
- Petitioners

Through: Mr. Manoj Taneja, Advocate.

versus

1. THE STATE (NCT OF DELHI)
 2. INDIAN POTASH LTD.
- Respondents

Through: Mr. Izhar Ahmad, APP for
State.
Mr. Tanveer Ahmed Mir,
Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE I.S.MEHTA

JUDGMENT

I. S. MEHTA, J.

1. By way of the instant petition under Section 482 read with Section 483 Cr.P.C. the petitioners are seeking for setting aside and quashing of the impugned order dated 16.05.2013 passed by the learned Metropolitan Magistrate (Central-02), Tis Hazari

Courts, Delhi in CC. No. 648/RN/2010 wherein the application filed by the petitioners under Section 311 Cr.P.C. was dismissed.

2. The brief facts as stated in the complaint filed by the respondent No.2-M/s Indian Potash Ltd. under Section 138 of the Negotiable Instruments Act, 1881 (*NI Act*) are that the respondent no. 2/complainant is a company duly incorporated under the Indian Companies Act, 1956 having its registered office at Ambal Building, 3rd Floor 727, Anna Salai, Chennai- 600006 and corporate office at 3rd Floor, Pragati Tower, 26 Rajinder Place, New Delhi- 110008. The respondent No.2/complainant, through its Senior Manager (PO), Sh. Ashok Pande, filed a complaint before the Court of Learned ACMM, Tis Hazari Courts, New Delhi under Sections 138 of the Negotiable Instruments Act, 1881 against the accused persons, i.e. (1) M/s Four Seasons Energy Ventures Pvt. Ltd., (petitioner no. 2 herein), (2) Venu Madhava Kaparthy (Director) (petitioner no. 1 herein) and (3) Mahadevan Ramaswamy Iyer Makiemadom (Director).

3. It is alleged in the said complaint that the petitioner No.1 and Mahadevan Ramaswamy Iyer Makiemadom (Director)/accused No.3 have been all time in-charge of and in day to day control of the business of the petitioner No.2-Company, moreover representing themselves to be the lawful directors and in-charge of the petitioner No.2-Company, have directly made representations to the respondent No.2 at its corporate office. It is further alleged that the petitioner No.1 and the said accused No.3 on behalf of the petitioner No.2-Company visited the office of the respondent No.2

in January 2010 at New Delhi at its corporate office and made representations that they were running a company which was carrying on the business of facilitating deals, contracts, supplies to International parties by India based companies in the field of fine quality iron ores. In this regard they had already resourced a foreign buyer based in Switzerland under the name & style of M/s. Glencore International A.G. and that in case respondent No.2- Company was interested then they could sign a contract with M/s. Glencore International A.G. in terms of which contract iron ore of specific quality and purity would be supplied by the respondent No.2/complainant to M/s. Glencore International A.G. as per the terms of the contract. It was also further stated that the iron ore would be procured by all the accused through their independent sources at rates agreed by and iron ore of specific quality would be made ready in storage at Krishnapatnam port at a specified period of time so that the same could be shipped to M/s. Glencore International A.G.

4. Further it is alleged that during the negotiations the petitioner No.1 and the accused No.3 stated to the respondent No.2/complainant that in order to make the deal of supply to M/s. Glencore International A.G. workable, respondent No.2/complainant was required to pay a mobilization advance of Rs. 2.50 crores to the aforesaid accused and also would have to make payments at the behest and at the instance of the said accused for procurement of iron ore at the end of the accused from time to time. In order to secure the respondent No.2/complainant, the

accused stated that for and on behalf of petitioner No.2 a Bank Guarantee to the tune of Rs. 1.25 crores would be executed in favour of respondent No.2/complainant in order to secure him as regards their mobilization advance. It is further alleged that the petitioner No.1 and the accused No.3 for and on behalf of petitioner No.2-Company quoted prices of supply of the iron ore of specific purity as required by M/s. Glencore International A.G. at their end which on the face of it were extremely lucrative in comparison to the rates at which the iron ore were to be supplied ultimately to M/s. Glencore International A.G. As the respondent No.2/complainant was to finalize the deal, enter into a contract with M/s. Glencore International A.G, arrange shipping and was also assured of payment of 98% of the value of goods shipped through irrevocable letter of credit to be opened by M/s. Glencore International A.G. in favour of the respondent No.2/complainant, the deal was worth the business proposition and therefore the respondent No.2/complainant accepted the offer.

5. It is stated that on 08.02.2010, a communication was sent by the accused persons to the respondent No.2/complainant stating the details of the export order as covenanted in the said communication. Also, it was clearly stated and admitted that the accused would supply all the material, provide the port plot, stock the iron ore and coordinate with CHA (Customs House Agent) to complete the loading of cargo. Pursuant to the receipt of the communication dated 08.02.2010, the petitioner no.1 and the accused No.3 came to Delhi and on 11.02.2010 a contract was

signed and executed by and between the petitioner No.2-Company through its Director-petitioner No.1 and the respondent No.2/complainant through its Senior Manager (PO) Ashok Pande in presence of the accused No.3 and other officers of the respondent No.2/complainant company. As per the covenants of the said agreement, the accused agreed to deliver a total quantity of 40,000 WMT of iron ore fine plus/minus 10% at the sellers option in one shipment. The specifications and chemical composition were clearly stated, further it was agreed that delivery would be made by the accused at Krishnapatnam port, the lay can date fixed as 10.03.2010 to 20.03.2010 and the latest date of shipment was to be 31.03.2010, the port of discharge was fixed as any port in China as per the requirements of the international buyer M/s. Glencore International A.G., the payment conditions, sampling and analysis were clearly agreed upon.

6. It is alleged that pursuant to the signing of the contract between respondent No.2/complainant and the petitioners, the respondent No.2/complainant provided the initial mobilization advance of Rs. 2.50 crores to them. The petitioners were already aware that the terms and conditions of the contract between respondent No.2/complainant and M/s. Glencore International A.G. clearly covenanted, series of duties and obligation and most importantly the buyer M/s. Glencore International A.G. had the right to reject the shipment in case the quality of Fe (iron) was found to be less than 60% by CIQ (Entry Exit Inspection) at the discharge port at China. Further the respondent No.2/complainant had provided the

petitioners a mobilization advance pursuant to their representations, in order to repay any outstanding liabilities, debts or part debts. The petitioner No.2-Company provided a cheque dated 09.02.2010 drawn on Indian Overseas Bank, Appareddypalaya- ISRO View Branch, 3274, 11th Main Road, Hall II Stage, Bangalore, bearing No. 909722 for an amount of Rs. 2.50 crores in favour of respondent No.2/complainant. Further a demand promissory note to the tune of Rs. 2.50 crores had already been prepared by the petitioners and the same along with the cheque were handed over to respondent No.2/complainant at New Delhi by their representatives.

7. It is stated that the entire consignment was therefore loaded in the vessel beyond time on account of reasons solely attributable to the accused mentioned above and huge demurrage charges and dead freight had to be incurred by the respondent no. 2/complainant for reasons solely attributable to the accused persons, because they failed to provide the nominated quantity of the consignment at the port on time, till sailing of the vessel they could only procure around 37,000 WMT of iron ore which was actually procured through on spot buying at much higher rates compared to their own proposal and costing sheet. On 6000 MT the respondent no. 2/complainant had to pay dead freight @ US\$ 21.00 per MT. Before the consignment was loaded the surveyors as appointed by the accused mentioned above, had submitted a report according to which Fe content as analyzed at the load port was 60.40%.

8. On 19.04.2010 the vessel accordingly arrived at the discharge port Caofeidian, North China and completed discharge on

28.04.2010. Even at the discharge port demurrage charges were incurred. At the discharge port the quality analysis of CIQ China and its report dated 09.05.2010 was informed by M/s. Glencore International A.G. to respondent No.2/complainant on 21.05.2010 and as per the said report Fe (Iron) content was well below 60% and was actually found to be only 57.70%, on account of which respondent No.2/complainant suffered huge embarrassment and M/s. Glencore International A.G. rejected the cargo at the destination.

9. It is alleged that on account of serious defaults at the petitioner's end, firstly in not being able to provide the entire consignment at the original bench mark rates as specified earlier by the petitioners, and secondly on account of delay, demurrage and dead freight charges that had been incurred by the respondent No.2/complainant, the respondent No.2/complainant had to make payments in the nature of payments made to various suppliers for on spot buying, ocean freight to ship owners, dead freight, load port demurrage and other payments that were made by the respondent No.2/complainant, minus the payment received from the international buyer, a direct loss to the tune of Rs. 5,22,04,201/- was suffered by the respondent No.2/complainant.

10. It is further stated that the respondent No.2/complainant informed the petitioners vide their communication dated 21.05.2010 in regard of their outstanding liabilities. The petitioner No.1 communicated that they would make sure that all the liabilities are cleared and in this regard the petitioner No.1 for and

on behalf of petitioner No.2-Company and accused No.3 and further communicated that the bank guarantee of Rs. 1.25 crores already existing in favour of the respondent No.2/complainant should be invoked for the same and recover part debt. Accordingly, the respondent No.2/complainant invoked the bank guarantee towards part realization of the outstanding liabilities. The petitioners were also informed that the cheque dated 19.02.2010 for an amount of Rs. 2.50 crores handed over by the petitioner mentioned above would be encashed by the respondent No.2/complainant and presented to their bankers. The petitioner No.1 assured to the respondent No.2/complainant that the said cheque would be honoured at all costs and would make funds available in their bank in order to have the said cheque realized. Even after encashment of the said cheque, a balance outstanding amount of Rs. 1,47,04,201/- would still be left at their end for payment to the respondent No.2/complainant. Accordingly, the respondent No.2/complainant presented the said cheque to its banker State Bank of India, East Patel Nagar, New Delhi for encashment, however, the same was dishonoured vide return memo dated 07.08.2010 with remarks "Exceed Arrangements".

11. Thereafter, the respondent No.2/complainant company issued a legal notice dated 26.08.2010 demanding therein to make the payment within 15 days from the receipt of the legal notices but the petitioners failed to make the payment in question to the respondent No.2/complainant. Consequently, the respondent No.2/complainant filed a complaint case under Section 138 of NI Act before the Court

of Ld. Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi, on 13.10.2010 against the accused persons including the petitioners.

12. The learned Metropolitan Magistrate (Central-02), Delhi vide order dated 16.11.2010 took cognizance of the offence punishable under Section 138 of the NI Act and issued summons to the accused persons/petitioners vide order dated 09.02.2011. Thereafter, vide order dated 17.03.2012 the learned Metropolitan Magistrate served notice under Section 251 Cr.P.C. against the accused persons through the counsel.
13. Subsequently, on 11.10.2012 the petitioners filed an application under Section 145(2) NI Act read with Section 311 Cr.P.C. for recall of the respondent no. 2/complainant witness for cross examination. The said application was dismissed by the learned Metropolitan Magistrate vide order dated 11.10.2012.
14. Thereafter, the petitioners filed another application under Section 311 Cr.P.C. before the learned Metropolitan Magistrate, Tis Hazari District Court, Delhi, for summoning material witnesses and for recall of the AR of the respondent No.2/complainant for cross examination in the CC No. 648/RN/10.
15. Consequently, the learned Metropolitan Magistrate (Central-02), Delhi vide order dated 16.05.2013 dismissed the said application of the petitioners as the earlier order dated 11.10.2012, which remained unchallenged, attained finality.

Hence, the present petition.

16. The learned counsel for the petitioners has submitted that while dealing under Section 138 NI Act cases though it may be summary but the basic structure of the proceeding cannot be taken away. He has further submitted that the learned Metropolitan Magistrate went wrong while framing the notice in the absence of the petitioners and subsequently the right of cross-examination too has been taken away and thereafter on moving of the application under Section 311 Cr.P.C the same has been rejected. There are three instances which are cogent evident which indicates that the basic right of the structure of the Cr.P.C is taken away and the same cannot be allowed and the impugned order requires to be set aside.
17. The learned counsel for the petitioner has further submitted that there has been total non-compliance of the provisions of Cr.P.C. as also provisions of section 143 NI Act. Admittedly, after passing the summoning order on 16.11.2010, no order with any reasons has ever been passed by the learned MM at any stage in order to find out as to what sort of procedure is being followed by learned MM till 17.03.2012, when notice/ charge was framed against all the accused through their learned counsel and then even till date. The proviso (2) to Section 143 NI Act assumes significance and has not been complied with at all by the learned Metropolitan Magistrate. He further submits that even the process of ordering, framing of notice and framing of charge/notice under Section 251 Cr.P.C. against all the accused, through their learned counsel on 17.03.2012 has not been proper and correct. While framing notice the learned Metropolitan Magistrate straight away called upon the accused,

through their learned counsel to disclose the defence and lead DE (even before granting any opportunity to cross examine the respondent No.2/complainant and other CW's) despite the said learned counsel for accused, at the stage of framing of notice, has pleaded "not guilty" and "claimed trial". Entire process followed by the learned Metropolitan Magistrate has been totally wrong, erroneous and against well established principles of law.

18. The learned counsel for the petitioner has further submitted that after framing of notice/charge against the accused through their learned counsel on 17.03.2012, the learned MM has even declined the written request made by the accused at the first available opportunity, under Section 145(2) NI Act read with Section 311 Cr.P.C for cross examination of the respondent No.2/complainant and other CW's on 11.10.2012 (simply on ground of delay) and then once again by dismissing the independent application filed on 02.03.2013, under Section 311 Cr.P.C. vide impugned order dated 16.05.2013. It is further submitted that the reasons given for declining the request and prayer of the petitioners to cross examine the respondent No.2/complainant and other material witnesses in the above two orders (impugned orders) are completely contradictory to each other and against principles of law. The said two orders dated 11.10.2012 and 16.05.2013 passed by the learned Metropolitan Magistrate are not only bad, illegal, wrong and erroneous but also against the law laid down by the Hon'ble Supreme Court in case titled ***Radhey Shyam Garg vs. Naresh Kumar Gupta; 2009 (13) SCC 201*** while upholding the judgment

delivered by this Court in case ***Radhey Shyam Garg vs. Naresh Kumar Gupta; 2008 IV AD (Crl) (DHC) 422.***

19. The learned counsel for the petitioner has further submitted that the accused can rely upon the cross examination of the respondent No.2/complainant to rebut the presumption and his witnesses. Reliance is placed on the judgment of the this Court in the case titled as ***Birender Singh vs. State (NCT of Delhi) & Ano; 2008 (1) JCC [NI]15.***
20. The learned counsel for the petitioner has also placed reliance on the following judgments:-
- 1) ***Babu vs. State of Kerala; 2010 (9) SCC 189.***
 - 2) ***P. Sanjeeva Rao vs. State of AP; 2012 (7) SCC 56.***
 - 3) ***Maria Margarida Sequeria Fernandes vs. Erasmo Jack de Sequeria through LRs; 2012 (3) SCALE 550.***
 - 4) ***Natasha Singh Vs. CBI (State); MANU/SC/0483/2013.***
 - 5) ***Anurag Sood vs. State (NCT of Delhi); 2017 (1) JCC 525.***
 - 6) ***Ajay Jain vs. Purshottam Nath Jain & Sons (HUF); MANU/DE/0396/2016.***
21. On the contrary the learned counsel for the respondent No.2 has vehemently opposed to the contentions raised by the learned counsel of the petitioners and has submitted that the accused were exempted by this Court and in terms of the judgment passed in ***M/s Bhaskar Industries Ltd. vs. M/s Bhiwani Denim and Apparels Ltd.; AIR 2001 SC 3625*** the Hon'ble Supreme Court has passed a decision that the accused can be exempted and in their absence through their counsel notice can be framed and even under Section

313 Cr.P.C. Statement can be recorded through counsel. He has further submitted that in the present case on 17.03.2012 when the notice was framed, the accused/petitioner did not choose to file application under Section 145 (2) N.I. Act on that date seeking cross examination of the complainant in that scenario the trial court listed the matter for defence evidence. Thereafter, on 06.08.2012, the accused filed defence evidence by way of affidavit as DW-1. On the next date i.e. on 13.09.2012 cross examination was to be done by the respondent No.2/complainant, they did not appear and thereafter, the NBW was issued. The on 11.10.2012 an application under Section 145 (2) NI Act was filed along with an application under Section 315 Cr.P.C. On the same date, an application under Section 145 (2) NI Act was dismissed and application under Section 315 Cr.P.C. was allowed. On 19.01.2013 the petitioner No.1 did not come forward to testify himself as a witness and for cross examination and ultimately, on 02.03.2013 a fresh application under Section 311 Cr.P.C. was filed by the petitioner again to recall the respondent No.2/complainant knowing that the earlier application under Section 145 (2) NI Act already stands dismissed on 11.10.2012 and the present application under Section 311 Cr.P.C. moved by the petitioner was too dismissed vide impugned order dated 16.05.2013. Therefore, the present petition is devoid of merit and same deserves to be dismissed. Reliance is placed on the judgment in case ***Rajesh Agarwal vs. State; 2010 (171) DLT 51.***

22. The learned counsel for the respondent has further submitted that the *mala fide* attempt on the part of the petitioners to mislead

this Court is apparent from the face of the record in as much as on one hand the petitioners are seeking quashing of order dated 17.03.2012 whereby notice under Section 251 Cr.P.C. was framed against the petitioners primarily on the ground that it was framed on the petitioners through their counsel and not personally on them but on the other hand, admittedly accused persons themselves had sought exemption from personal appearance before the learned Metropolitan Magistrate, which was granted by this Court in CrI.M.C. No. 1648 of 2011 filed by the petitioners/ accused persons vide order dated 20th May, 2011 and only pursuant thereof notice was framed against the petitioners and other accused person through their counsel. Under these circumstances, the notice framed by the learned Metropolitan Magistrate cannot be termed as arbitrary or illegal. Moreover, the said order dated 17.03.2012 was never challenged by the petitioners which clearly show that the present petition is nothing but an abuse of process of law in order to delay the trial and thus, deserves to be dismissed.

23. The learned counsel for the respondent has further submitted that the procedure followed by the learned Metropolitan Magistrate while trying the complaint case filed by the respondent No.2 is in accordance with law and the orders passed by the learned Metropolitan Magistrate therein are absolutely right and legally passed with proper application of mind and does not suffer any illegality/absurdity of any sort. Also, the petitioners have failed to point out any irregularity/illegality in the impugned orders which

warrant exercise of inherent powers by this Court under Section 482 Cr.P.C.

24. The learned counsel for the respondent No.2 has further stated that the matter has already reached at the stage of defence evidence (petitioner herein) and filing the present petition would only delay the trial which would cause prejudice to the respondent No.2/complainant.

25. In the instant petition, from the perusal of the record it shows that the complaint was filed on 13.10.2010 and the same was firstly taken up on 23.10.2010 and thereafter pre-summoning evidence by way of affidavit of CW-Ashok Pande was tendered; cognizance was taken and the accused persons (including the petitioner herein) were summoned on 16.11.2010 and notice under Section 251 Cr.P.C. was served through the counsel of the accused on 17.03.2012.

26. Thereafter, on 11.10.2012 the petitioner No.1 through counsel moved an application under Section 145(2) NI Act read with Section 311 Cr.P.C. for recall of respondent No.2/complainant witness for cross-examination. The said application moved by the petitioner was dismissed by the learned Metropolitan Magistrate (C-02)/Delhi vide order dated 11.10.2012 which is reproduced s under:-

*M/s Indian Potash Ltd. Vs. M/s Four Seasons Energy
Ventures Pvt. Ltd.
CC No. 648/RN/10
11.10.2012*

*Present: Ld proxy counsel for the complainant.
Both the accused alongwith Ld. Counsel.*

Both the accused are directed to be released on bail on furnishing of Bail Bonds for a sum of Rs 1 Lacs and Surety Bond of the like amount.

Accused no.3 Mahadevan Ramaswamy Iyer Maliemadom has furnished Bail Bond/Surety Bond. Accepted.

Accused no.2 Venu Madhava Kaparthy has sought some time to furnish Bail Bond/Surety Bond. Request allowed.

Ld Counsel for the accused has moved an application u/s 145(2) of the N.I. Act for cross examination of the complainant as well as an application u/s 315 Cr.P.C with the permission for accused no.2 to be allowed to step into the witness box as DW1.

The application u/s 145(2) of the N.I. Act has been belatedly moved. As per law laid down, the same was to be immediately filed after framing of notice. Now, the case has already reached at the defense stage. Infact, last opportunity was granted to the accused to lead DE on the previous date, hence present application is not maintainable at this stage, accordingly, it is dismissed.

An application u/s 315 Cr.P.C on behalf of accused no.2 is allowed. He is allowed to depose as DW. His affidavit has been placed on record. However, Ld Proxy counsel for the complainant has requested for an adjournment to cross examine him on the ground that main counsel is not available today. request allowed.

Copy supplied. Be listed for cross examination of the above witness on 19.01.2013.

*Sd/-
(CHANDER MOHAN)
MM (C-02)/Delhi.
11.10.2012*

27. Further the petitioner again on 02.03.2013 through counsel moved an application under Section 311 Cr.P.C. for summoning material witnesses and for recall of the AR of the respondent No.2/complainant for cross examination. The aforesaid application under Section 311 Cr.P.C. moved by the petitioner was dismissed by the learned Metropolitan Magistrate vide order dated 16.05.2013 which is reproduced as under:-

16.05.2013

CC No. 648/RN/10

M/s Indian Potash Ltd. v. M/s Four Seasons Energy Ventures

Present: Counsel for complainant.

Accused no.2 along with Ld. counsel.

Accused no.3 is absent.

An exemption application has been moved on behalf of accused no.3.

Heard. Exemption is allowed for today only.

Arguments on application u/s 311 Cr.P.C moved by accused for summoning o material witnesses and for request for AR of complainant for cross examination heard.

Under the Negotiable Instruments Act, there is no specific provision for cross examining the complainant under section 142. The said application has already been declined by this court vide order dated 11.10.2012 which remained unchallenged and hence, attain finality. The case has already reached at the stage of DE and infact, last opportunity was granted to the accused to lead DE. At this stage, the application u/s 311 Cr.P.C. is not maintainable hence, dismissed.

Already last opportunity was granted to the accused to lead DE on the previous date. Still in the interest of justice one more opportunity is given to the accused to lead DE.

Be listed for 30.07.2013 at 11.00 a.m.

Sd/-
(CHANDER MOHAN)
MM (C-02)/Delhi.
16.05.2013.

28. Here,
the examination of a witness as under Section 137 of the Indian Evidence Act, 1872 means,
his examination-in-chief, his cross-examination and if any ambiguity does arises to the Court,
re-examination by the former.
29. The main object of cross-examination is to find out the truth and detection of falsehood in human testimony to reach to the right conclusion for just decision of a case pertaining to the incident.
The right of cross-examination under Section 137 of the Indian Evidence Act, 1872 is a well guarded device for discovering the truth to which the witness has deposed in his statement, i.e. Examination-in-chief.
Therefore, the right of cross-examination is a statutory right which vests in a party to the proceedings.
30. For the context of the instant case, reference may be made to Section 311 Cr.P.C. which is reproduced as under:-
"311. Power to summon material witness, or examine person present-
Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-

examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

31. The aforesaid section manifestly gives purely discretionary authority to a Criminal Court, firstly, by enabling it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. Secondly, it is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court, the duty of examining a material witness who would not be otherwise brought before it. It is not only the prerogative but the duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice. It is the duty of the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.
32. The object of Section 311 Cr.P.C. is that, there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of

the case. This section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. However, it has to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

33. The examination of a witness means as laid down in Section 137 of The Indian Evidence Act, 1872, his examination-in-chief, his cross-examination and his re-examination.

It follows that the provision that a witness shall be examined means not only that he shall be examined-in-chief but also that he should be permitted to be cross-examined and re-examined.

34. Further, examination-in-chief of a witness alone without his cross-examination is incomplete statement of witness and is not evidence under the Indian Evidence Act.

Whole of evidence, i.e. examination-in-chief and cross-examination, is to be read together for correct appreciation to find out truth there from cross-examination being a part of evidence, while judging veracity of statement of a witness.

35. The judgment of the Apex Court in case ***Radhey Shyam Garg vs. Naresh Kumar Gupta; 2009 (3) JCC (NI) 204*** is relevant, which is reproduced as under:-

"13. Examination in terms of the provisions of the Indian Evidence Act envisages examination in chief, cross-

examination and re-examination, as would appear from Sections 137 and 138 thereof. A person whose evidence has been taken by way of an examination in chief by way of affidavit, keeping in view the statutory scheme noticed both in the Code of Civil Procedure as also in the Code of Criminal Procedure, there cannot be any doubt whatsoever that a person intends to summon a witness who had filed his affidavit would be only for the purpose of his cross-examination."

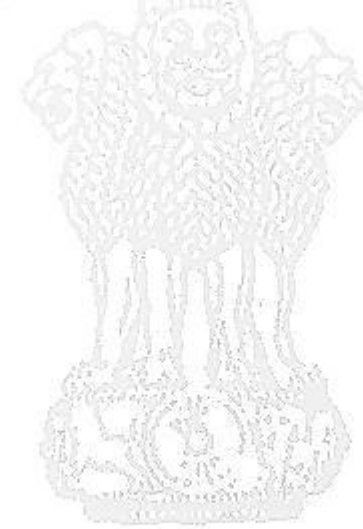
36. The very purpose of Section 137 of Evidence Act and Section 311 Cr.P.C. would be defeated if the opportunity to cross-examine a witness is not given to the either of the party.
37. In the present case the dismissal of the application moved by the petitioner No.1 under Section 145 (2) NI Act as well as under Section 311 Cr.P.C. otherwise means obstruction in bringing out the evidence on record.
38. The Court is duty bound to allow the cross-examination of the witness whose examination-in-chief has already been recorded. Without allowing cross-examination of the statement of such witness the same cannot be read in evidence in the instant summary procedure case.
39. The judgment relied by the learned counsel for the respondent in case ***Rajesh Agarwal vs. State*** is not applicable in the facts and circumstances of the present case.
40. Therefore, in view of the above discussions the present petition is allowed. Consequently, the impugned orders dated 11.10.2012 and 16.05.2013 passed by the learned Metropolitan Magistrate

(Central-02), Tis Hazari Courts, Delhi in CC. No. 648/RN/2010 are set aside.

41. The lower Court is directed to give opportunity to the petitioners to cross-examine the witness in accordance with law. Parties are directed to appear before the lower Court on or before 20.12.2017.
42. Let one copy of this judgment be sent to the concerned Court. All the pending applications (if any) are disposed of accordingly.
43. Lower Court Record be sent back forthwith. No order as to costs.

DECEMBER 01, 2017

I.S.MEHTA, J



सत्यमेव जयते