

Sr. No.254

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

**CRM-M-11151-2017(O&M)
Date of decision:29.08.2018**

Jeet Agro Industries and others

.....petitionerss

versus

M/s Khalsa Machinery Store

.....Respondent

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. H.P.S.Ghuman, Advocate
for the petitioners.

Mr. K.B.Raheja, Advocate
for the respondent.

Rajbir Sehrawat, J(Oral)

This is a petition seeking modification of the Order dated 02.03.2017, passed by the Judicial Magistrate Ist Class, Malerkotla in a complaint filed under Section 138-A of Negotiable Instruments Act, to the extent that it has denied the opportunity to the petitioners/accused to cross-examine the witnesses of the complainant; after serving the notice of accusation upon him, with a further prayer that the petitioners be granted an opportunity to cross-examine the witnesses of the complainant.

The brief facts of this case are that the complainant filed the above said complaint under Section 138-A of the Negotiable Instruments Act qua dishonor of three cheques for the amount of Rs.6 lakhs. The petitioners had been appearing before the Trial Court. It appears that several trials are going on against the petitioners and in other trials the notice was duly given and evidence was recorded. However, in the

present trial, proper notice of accusation was not served upon the petitioners and, by mistake, the statements of the complainant and his witnesses were recorded. When the case was fixed for recording of the statement under Section 313 Cr.P.C. then this defect was noted by the Trial Court. Accordingly, on 02.03.2017 the notice of accusation was given to the petitioners.

On the same day, the separate statements of the petitioners were recorded that the petitioners do not want to cross-examine the witnesses of the complainant. However, this statement was not signed by the counsel for the petitioners.

On the same day, the statement of the petitioners under Section 313 Cr.P.C. was also recorded by the Trial Court. In this statement the petitioners denied the evidence of the complainant and claimed innocence.

Other statements of the petitioners were also recorded by the Trial Court on the same day, as reply to the notice of accusation. In these statements the petitioners pleaded not guilty and specifically stated that they wanted to cross-examine the witnesses of the complainant and that they be given opportunity for that purpose.

Arguing the case, learned counsel for the petitioners has contended that since the notice of accusation was not earlier served upon the petitioners, therefore, the evidence of the complainant recorded before such notice of accusation, can not be used against the petitioners. It is further contended by learned counsel that although the statements have been recorded by the Trial Court, that the petitioners do not want to cross-examine the witnesses of the complainant, however, these statement have been recorded in absence of the counsel for the petitioners. The petitioners,

being a lay man, could not have visualized the legal effect of such a statement. Only the counsel for the petitioners could have made this kind of statement whether he wanted to cross-examine the witnesses of the complainant or not. However, there is no such statement from the counsel of the petitioners.

Still further it is contended by learned counsel, that on the same day in other statements recorded by the Trial Court, the petitioners have specifically stated that they deny the charge against them and that they shall cross-examine the witnesses of the complainant and further that they be provided an opportunity of cross-examine the witnesses. In view of the above, learned counsel for the petitioners submits that since the petitioners have specifically made statements to cross-examine the witnesses of the complainant, therefore, it is totally unjust on the part of the Trial Court to deny the opportunity of cross-examination of the witnesses of the complainants; by the petitioners.

On the other hand, learned counsel for the complainant has argued that since in connected cases, evidence has already been completed and the petitioners have already cross-examined the witnesses of the complainant, therefore, the only intention of the petitioners behind filing the present petition is to delay the proceedings. It is further contended by the counsel that since the trial is continuing for several years now, therefore, if at all the petitioners are to be granted opportunity to cross-examine the witnesses of the complainant; then a direction be also issued for completion of the trial within a time bound manner; and preferably within a period of three months.

Having heard the learned counsel for the parties and perusing

the record, this Court finds that on 02.03.2017, the Trial Court has recorded separate statements of the petitioners that they do not want to cross-examine the witnesses of the complainant. However, on the same day in response to the notice of accusation served upon the petitioners, the Trial Court has also recorded other statements of the petitioners; wherein they have specifically stated that they want to cross-examine the witnesses of the complainant and that they be granted opportunity to cross-examine them. Even the statement of the petitioners under Section 313 Cr.P.C. recorded by the Trial Court on the same day show that the petitioners have denied the evidence led by the complainant.

In view of the above it is clear that there was a confusion qua understanding of the matter as on 02.03.2017, when all these things happened and all these statements were recorded. Learned counsel for the petitioners appears to be justified in making submission that the relevance of the cross-examination of the witnesses of the complainant could have been decided only by the counsel of the petitioners and not by the petitioners themselves.

Hence, even if the order passed by the Trial Court, strictly speaking is correct, then also the benefit of doubt arising from the above said confusion has to go to the accused, so that the accused/petitioners are not left with any grouse of not being heard properly during the course of the trial. Hence it would not be unjustified if the petitioners are granted opportunity to cross-examine the witnesses of the complainant.

Therefore, the present petition is disposed of with a direction that the petitioners be granted opportunity to cross-examine the witnesses of the complainant. However, it is further directed that the proceedings of the

trial shall be completed by the Trial Court within a period of three months from the date first fixed after the receipt of the certified copy of this Order. By way of abundant caution it is clarified that the cross-examination of the witnesses of the complainant by the petitioners and any other defence evidence to be led by the petitioners/accused shall have to be completed within abovesaid period of three months only. The Trial Court shall not grant any further time for this purpose under any circumstances.

With the above directions the present petition is disposed of.

29th August, 2018

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*