

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

**CRM-M No.7808 of 2016 (O&M)
Decided on: 23.02.2018**

M/s Devyani Food Products through its Proprietor and another

....Petitioners

Versus

M/s. Lakshmi Builders through its Proprietor

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikram Chaudhary, Sr. Advocate
with Mr. Rakesh Dhiman, Advocate
for the petitioners.

Mr. Suman Jain, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 23.02.2016 passed by the trial Court in Criminal Complaint No.RBT No.184 of 27.04.2015 vide which the application filed by the petitioners/accused under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') for recalling the complainant/respondent for his cross-examination has been dismissed by the trial Court.

Brief facts of the case are that the respondent/complainant has filed a complaint under Section 138 of the Negotiable Instruments Act (in short 'N.I. Act') with the allegations that the cheque issued by the petitioners/accused was dishonoured by the bank on account of insufficient funds on 09.08.2012 and despite issuing a legal notice, the amount was not paid.

During the pendency of the complaint, on 05.03.2014, the

petitioners made the following statement:-

“Statement of Vinod Sharma, Proprietor of Laxmi Builder R/o 267, Sector 22, Gurgaon.

On SA

M/s. Devyani Food Products through its Proprietor Sh. Devender @ Devender Lakra R/o 663, village Mundka, Delhi.

On SA

Jointly stated that the matter has been mutually settled between complainant and accused. In pursuance of settled accused shall pay sum of Rs.50 lac to the complainant on or before 15.04.2014. If accused fails to pay above amount by above date then he shall transfer his plot situated at village Didarpur on 16.04.2014 as per mutually agreeable valuation of the said plot which will be decided mutually by both the parties later on. Pending payment will be paid by accused in monthly installment of Rs.50 lac per month.

*Sd/-
JMIC/Gurgaon
05.03.2014”*

Learned Senior counsel for the petitioners has submitted that on 05.03.2014, the petitioner has made above statement that he is ready to pay a sum of Rs.50 lacs to the complainant on or before 15.04.2014, however, on the same day, the respondent/complainant was recalled for further cross-examination by the accused, but it is shown that opportunity given and cross-examination is NIL. Thereafter, on the same day, the complainant closed his evidence by making a statement dated 05.03.2014 and again on the same day, the statement of the petitioner/accused under Section 313 Cr.P.C. was recorded. Learned Senior counsel for the petitioners has further submitted that as per Question No.4 put in the statement recorded under Section 313 Cr.P.C.,

the petitioner denied his liability and as per Question No.6 asking him if he want to lead the evidence in defence, he has given an option that he want to lead the defence evidence. It is further submitted that thereafter, the petitioner moved an application before the trial Court under Section 311 Cr.P.C., for recalling the witness/complainant for cross-examination as the offer given by the petitioner as per the statement dated 05.03.2014 which was not adhered to by the trial Court. Learned Senior counsel for the petitioners has further submitted that the respondent filed a reply to the application and contested the same and the trial Court vide impugned order dated 23.02.2016 dismissed the application.

Counsel for the respondent, on the other hand, has submitted that the conduct of the petitioner during pendency of the trial show that the has been delaying the proceedings on one pretext or the other. Counsel for the respondent has further submitted that on 10.12.2013, the petitioner/accused has admitted his liability and sought time for making the payment and subsequently on 17.01.2014, he has made part payment of Rs.10,000/- to the complainant, however, the cheque given in the settlement was dishonoured. It is also stated that the petitioner absconded from the proceedings before the trial Court and at one point of time, the proceedings to declare him as proclaimed person under Section 82/83 Cr.P.C. were initiated and he was declared as proclaimed person vide order dated 07.07.2014 and in order to procure the presence of the petitioner, attachment proceedings were carried out and he appeared only after the property of the petitioner was attached by the Court. Counsel for the respondent has, thus, submitted

that the petitioner is trying to delay the proceedings by adopting one or the other tactics and has never shown his bona fide that he is interested in settling the matter. Even the cheques given by him on an earlier occasion were dishonoured. It is further submitted that on 05.03.2014, when the statement was given by the petitioner, it was yet another novel method to get an adjournment, as on that day, the complainant was present for his cross-examination which was not done by the accused. It is further submitted that with regard to the reply given by the petitioner in Question No.6 of the statement recorded under Section 313 Cr.P.C., the petitioner never opted to lead any defence evidence and has rather filed the present application under Section 311 Cr.P.C.

In reply, learned Senior counsel for the petitioners has refuted all the allegations made by counsel for the respondent.

After hearing counsel for the parties, I find merit in the present petition. The petitioner/accused has a right to cross-examine the complainant, in order to put his defence and to prove his innocence. Though, a perusal of the reply filed by the respondent demonstrate that the complainant is adopting delaying tactics and has succeeded in delaying the disposal of the trial which is pending since 2012, however, considering the fact that the complainant has made a statement on 05.03.2014 that he shall make the payment of Rs.50 lacs to the complainant on or before 15.04.2014, the trial Court has neither believed the said statement nor granted time to the accused to present the demand draft of Rs.50 lacs and in such eventuality, it may have helped in earlier disposal of the complaint. The very fact that the evidence of the complainant was closed on the same day i.e. 05.03.2014

and the statement of the petitioner was also recorded under Section 313 Cr.P.C. on the same day, also show that the trial Court acted in a haste and did not grant reasonable time to the petitioner/accused. Though, the conduct of the petitioner is not upto the mark as is demonstrated from the reply filed by the respondent, yet, considering the fact that he has made an offer on 05.03.2014 to make the payment upto 15.04.2014 which was not granted by the trial Court and rather, on the same day, the cross-examination of the respondent/complainant was completed by treating the cross-examination as NIL, has however, adversely affected the right of defence of the petitioner.

In view of what has been discussed hereinabove, this petition is allowed and the impugned order dated 23.02.2016 passed by the trial Court, dismissing the application filed by the petitioner under Section 311 Cr.P.C. to allow him to cross-examine the complainant is set-aside. However, considering the fact that the petitioner is delaying the proceedings and intentionally absconded from the proceedings before the trial Court and at one point of time was declared as a proclaimed person, the petitioner is directed to pay the costs of Rs.1,00,000/- to the respondent/complainant by way of a demand draft.

It is made clear that the payment of costs shall be a pre-condition for the trial Court, to proceed further.

It is further directed that the trial Court will grant one effective opportunity to the petitioner to cross-examine the respondent/complainant and thereafter, the trial Court will grant two effective opportunities to the petitioner to record his fresh statement under Section 313 Cr.P.C. and to lead his defence evidence.

Since, the complaint before the trial Court is pending since 2012 and proceedings in this petition were stayed by this Court vide order dated 03.04.2016, therefore, the trial Court is also directed to conclude the trial within a period of 04 months from the date of receiving the certified copy of this order.

23.02.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No