

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C.4463/2017 & CRL.M.A. 1788/2017(STAY)**

Order reserved on: 23rd November, 2017

Order pronounced on: 4th January, 2018

NITIN GUPTA

....Petitioner

Through: Mr. M.N. Kural and Ms.
Pushpa Sharma, Advocates

Versus

M/S AAKASH METAL INDUSTRIES

...Respondent

Through: Mr. I.V. Raghav, Advocate

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

1. The present petition filed by the petitioner under Section 482 of Code of Criminal Procedure, 1973 (hereinafter after referred as 'Cr.P.C.') *seeking setting aside of order dated 20.01.2017 and 25.03.2017* passed by learned ACMM, Karkardooma Courts, Delhi, whereby the petitioner's right to cross-examine the respondent/complainant was closed by the Trial Court.
2. The brief facts of the present case are that the complaint under Section 138 of the Negotiable Instruments Act was filed by the complainant/respondent against the petitioner alleging that the cheques issued by the petitioner in discharge of his admitted liability was dishonoured, on presentation, to the bank concerned. The Trial Court vide order 14.07.2016, issued summons to the

petitioner. The matter was sent to mediation centre but the same failed. On 20.12.2016, the counsel for the petitioner sought time from the court concerned to file an application under Section 145(2) of NI Act and the same was allowed, subject to the cost of Rs.10,000/- and was fixed for 20.01.2017. On 20.01.2017, the petitioner failed to file an application under Section 145(2) of NI Act and his right to cross-examine the respondent was closed. The matter was further listed on 25.03.2017 for S.A/D.E. On 25.03.2017, the application moved by the petitioner was dismissed by the court on the ground that the same was not maintainable as the right to cross-examination had already been closed on 21.01.2017. Hence, the present petition.

3. The learned counsel for the petitioner contended that the Trial Court had erred in passing the order dated 20.01.2017 and 25.03.2017, as the same is based on conjectures and surmises; that on 20.01.2017, when the matter was taken up by the learned ACMM and after informing the court he had gone to call his counsel, his right to cross-examination had been closed.
4. The learned counsel for the respondent opposed the present petition thereby submitting that the right of the counsel for the petitioner to cross examine the respondent/complainant has already been closed by the Trial Court after granting reasonable opportunity to the petitioner to file the application under Section 145(2) of NI Act. Hence, the present petition should not be allowed.
5. The submissions made by the both the parties have been considered and the records perused.

6. After considering the facts and circumstances of the present case, it is pertinent to ascertain, ***whether the Trial Court order 20.01.2017, closing the petitioner's right to cross-examine the respondent calls for any interference.*** In this regard, it is relevant to reproduce Section 145 of N.I. Act which reads as under:

“145. Evidence on affidavit - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceedings under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution of the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

7. The above provisions makes it clear beyond any reasonable doubt that the complainant can give his evidence by way of an affidavit during the course of trial for offences punishable under Section 138 NI Act. Sub-section (2) of Section 145 NI Act provides that the Magistrate may on the application moved by the accused, summon the complainant for his cross-examination as to the effect contained in the affidavit.

8. Keeping in mind the above provisions as well as the parameters of this court under Section 482 Cr.P.C., it is found as per the facts and circumstances of the present case, the petitioner was granted several opportunities to file an application under Section 145(2) of

NI Act. The first opportunity to file an application under Section 145(2) of NI Act was granted to the counsel for the petitioner on 03.11.2016 and thereafter, on 10.11.2016, 18.11.2016, 20.12.2016 and 21.01.2017. After being provided three opportunities to the petitioner to file an application under Section 145(2) of NI Act by the court, on 20.12.2016 when the petitioner further failed to file the same, he was granted one last opportunity subject to the cost of Rs. 10,000/- and matter was further list up for 20.01.2017. However, on 20.01.2017, the petitioner's failure to file the same, led to closure of his right to cross-examine the respondent/complainant. On 20.01.2017, the petitioner appeared in the concerned court and his appearance is shown in the order dated 20.01.2017, when the petitioner's right to cross-examination was closed by the Trial Court.

9. On perusal of the entire facts and circumstances of the case as well as the record, this court is of the view that the petitioner was provided with ample opportunities by the Trial court to file the said application under Section 145(2) of NI Act before the concerned court, and only after reasonable opportunities were given, the right of the petitioner was closed.

10. Hence, keeping in view the above, no interference by this court in impugned order dated **20.01.2017** and **25.03.2017** passed by the Trial court is called for.

11.

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nce, the present petition is dismissed.

Crl.M.A 17887/2017(Stay)

In view of the aforesaid order, the present application is rendered infructuous and disposed of.

SANGITA DHINGRA SEHGAL, J

JANUARY 4 , 2018 gr//