

**S.No.123**

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

\*\*\*\*

**CRM-M-13726 of 2019 (O&M)**

**Date of Decision:27.03.2019**

**M/s R.R. Constructions sole proprietorship concern**

**G-828, Faridabad and another**

**.....Petitioners**

**Vs.**

**Pramod Kumar Thakur**

**.....Respondent**

**CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. Mayank Dev Singh, Advocate  
for the petitioners.

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**Rajbir Sehrawat, J.(Oral)**

This is a petition seeking quashing of the orders dated 01.12.2018 and 16.01.2019, whereby; respectively; the opportunity for the petitioners/ accused to cross-examine the witnesses of the complainant was closed; and further; their application moved thereafter, under Section 311 Cr.P.C for recalling of the complainant and his witnesses for re-examination/ cross-examination was dismissed.

Learned counsel for the petitioners has submitted that although in the impugned order closing the opportunity for the petitioners to cross-examine the complainant and his witnesses, it has been recorded that sufficient opportunities have been granted to the petitioners, however, the absence of the petitioners from conducting cross-examination was not intentional. It is submitted by the counsel that; earlier; the negotiations were going on with the complainant for a possible settlement of the dispute. That had consumed two/ three opportunities. Thereafter, just before the last date, when the opportunity to cross-examine was closed by the Court, the petitioner No.2 met with an accident in which he got 70% disability in his

leg. Therefore, he could not appear before the Court. However, since the

Court had already passed the order closing the opportunity to cross-examine the complainant and his witnesses, therefore, the petitioners were not left with any alternative but to move an application under Section 311 Cr.P.C for recalling of the complainant and his witnesses for cross-examination.

The facts as delineated in the impugned order show that the complaint pertains to the year 2017. The complainant has already completed his evidence. The case was being adjourned by the trial Court only for the purpose of providing an opportunity to the petitioners to cross-examine the complainant and his witnesses. The impugned orders also shows that as many as ten opportunities have been granted to the petitioners for this purpose. The order further shows that the Court had gone to the extent of requesting the counsel for the petitioners to cross-examine the complainant and his witnesses, so that the trial could be completed. However, repeatedly, counsel for the petitioners had moved an applications seeking exemption from personal appearance of the petitioners and have chosen not to cross-examine the complainant and his witnesses. Still further, once the opportunity to cross-examine the complainant and his witnesses has been closed by the order of the Court, after granting so many opportunities, then moving an application under Section 311 Cr.P.C, by any means, cannot be taken as any bonafide exercise on the part of the petitioners.

In view of the above, this Court does not find any ex-facie illegality or impropriety in the orders passed by the Court below. Therefore, there is no scope for interfering with the orders passed by the trial Court qua the merits of the same.

However, since the petitioners herein are accused in the case,

therefore, lest they should have any impressions, though misconceived, that they have not been granted proper opportunity to defend themselves; it would not be unjustified to grant them one more opportunity to cross-examine the complainant and his witnesses , however, by putting them to appropriate financial burden.

Hence, the present petition is disposed of with a direction that the trial Court shall grant one effective opportunity to the petitioners to cross-examine the complainant and his witnesses, subject to payment of Rs.1 lakh as cost. Out of this amount of cost of Rs.1 lakh, the petitioners shall deposit an amount of Rs.50,000/- with District Legal Services Authority, Faridabad, Rs.25,000/- shall be deposited with Punjab and Haryana High Court Bar Association and the balance amount of Rs.25,000/- shall be deposited with Children Home `Ashiana', Sector-15, Chandigarh.

However, it is clarified that the petitioners shall be granted an opportunity to cross-examine the complainant and his witnesses only after they produce the receipt of having deposited the cost; as mentioned above.

Since the case pertains to the year 2017 and the complaint is under Section 138 of Negotiable Instruments Act, which is supposed to be disposed of within six months, therefore, it would be appropriate if the trial Court decides the trial itself finally; expeditiously, preferably within a period of four months from the date next fixed before the trial Court.

**March 27, 2019**  
**renu**

**( RAJBIR SEHRAWAT )**  
**JUDGE**

Whether Speaking/reasoned  
Whether Reportable

Yes/No  
Yes/No