

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of decision: 15.03.2019

1. CRM-M-3037-2014 (O&M)

M/s Mukerian Paper Limited and another

....Petitioners

Versus

IFCI Limited

....Respondent

2. CRM-M-23476-2018 (O&M)

M/s Mukerian Paper Limited and another

....Petitioners

Versus

IFCI Limited

....Respondent

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present: Mr. Yogesh Goel, Advocate  
for the petitioners (in both cases).

Mr. V.K. Sachdeva, Advocate  
for the respondent (in both cases).

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**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in CRM-M-3037-2014 is for setting aside the order dated 19.12.2013 (Annexure P-6), vide which application of the petitioner filed under Section 311 Cr.P.C. for recalling of the complainant and its

witnesses for their cross-examination was dismissed by the trial Court as well as the order dated 18.01.2014 (Annexure P-8) passed by the revisional Court, dismissing the revision petition filed by the petitioners, against the aforesaid order of the trial Court.

Prayer in CRM-M-23476-2018 is for quashing of complaint No.494 dated 18.07.2003 titled as IFCI Ltd. Vs. Mukerian Papers Ltd. and anr. under Sections 138, 141 & 142 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act'), the summoning order dated 07.02.2004 (Annexure P-2) and the order dated 03.03.2014 (Annexure P-7), vide which petitioner No.1 Sanjeev Kumar, being Director of petitioner No.1 and petitioner No.2 Neelam Kumar Oswal, being Chairman-cum-Managing Director of petitioner No.1, were declared proclaimed persons.

Since both the cases are arising out of one complaint, same are being disposed of by this common judgment.

Brief facts of the case are that the respondent had filed the aforesaid complaint against the petitioners with the allegations that petitioner No.1 issued two cheques bearing No.593368 and 593369, both dated 30.10.2002, amounting to Rs.5.00 lacs each, to clear the part payment of loan amount but the said cheques were dishonoured on account of insufficient funds vide memos dated 08.05.2003 and 28.05.2003 respectively. Thereafter, the complainant issued a legal notice dated 06.06.2003 and when the petitioners failed to respond, the impugned complaint was filed on 18.07.2003.

After the complainant led its preliminary evidence, the

petitioners were summoned to face the trial vide order dated 07.02.2004 .

Learned counsel for the petitioners has submitted that on 03.11.2011, the petitioners appeared before the trial Court and furnished their bail bonds and are facing the trial. It is further submitted that the petitioners had earlier filed CRM-M-196-2011 praying for quashing of the impugned complaint and its subsequent proceedings, in which proceedings were initially stayed while issuing notice of motion, however, the said petition was withdrawn with liberty to take all the pleas available during the trial and personal appearance of the petitioners was exempted and liberty was also granted to them to appear through counsel vide order dated 16.07.2013 passed in CRM-M-196-2011.

For ready reference, the order dated 16.07.2013 passed by this Court, is reproduced as under: -

*“Learned counsel for the petitioners submits that he may be permitted to withdraw the petition to enable the petitioners to take up all the pleas available to them during trial.*

*Dismissed as withdrawn.*

*However, personal appearance of the petitioners before the trial Court during trial shall remain exempted subject to the following conditions: -*

- i. petitioners shall be represented through counsel;*
- ii. shall not delay/stall the trial proceedings;*
- iii. Shall not dispute their identity as accused;*
- iv. shall have no objection if the prosecution evidence is*

*recorded in their absence but in the presence of their counsel.*

*v. shall appear before the trial Court as and when required by the trial Court.*

*vi. any other condition which the learned trial Court may impose.”*

Thereafter, the case was fixed for complainant's evidence and vide orders dated 05.10.2013, 07.11.2013 and 26.11.2013, after recording the statements of CW1 to CW4, their cross-examination was treated as Nil, as despite undertaking given by the petitioners that they will be represented by counsel, their counsel did not appear and the petitioners had filed an application under Section 311 Cr.P.C. for recalling the said witnesses, however, the application was dismissed vide order dated 19.12.2013 passed by the trial Court. Thereafter, the petitioners filed a revision petition before the Court of Sessions, which was also dismissed vide order dated 18.01.2014 (both these orders are under challenge in CRM-M-3037-2014).

In the meantime, trial Court, vide order dated 16.01.2014, fixed the date as 21.01.2014 for recording the statement of the petitioner under Section 313 Cr.P.C. and on that account, the application filed by the petitioners seeking exemption from personal appearance was declined, as it was a substantive date for recording the statement and non-bailable warrants were issued against them. Thereafter, the case remained pending for service of the petitioners and ultimately, the proclamation was issued under Section 82 Cr.P.C. and the petitioners were declared proclaimed persons vide order

dated 03.03.2014. The petitioners have challenged the said order in CRM-M-23476-2018.

It is worth noticing here that second petition is filed during pendency of first petition i.e. CRM-M-3037-2014, in which the petitioners are challenging the order declaring the cross-examination of complainant's witnesses as Nil. Since this petition is pending since long, both the cases were taken up together for final disposal. On 29.08.2018, learned counsel for the petitioners had submitted that the petitioners are ready to deposit the cheque amount of Rs.10.00 lacs by way of demand draft with the Registrar General of this Court subject to final outcome of the case and subject to right of the petitioners in the litigation pending before the Debt Recovery Tribunal. Thereafter, the petitioners have submitted the demand draft equal to the cheque amount and the same was handed over to the Registrar General, who was directed to keep the amount in the form of an FDR in a nationalized bank.

Learned counsel for the petitioners has argued that the impugned order dated 19.12.2013, dismissing the application filed by the petitioners under Section 311 Cr.P.C. for recalling the complainant and its witnesses for further cross-examination as well as the order dated 18.01.2014 passed by the revisional Court are liable to be set aside. It is further argued that in the application filed by the petitioners, it is specifically stated that 04 witnesses namely Ms. Hemlata Doley, Narinder Kumar, Naresh Kumar and Chitranjan Sharma were examined by counsel for the complainant as CW1 to CW4, however, when the case was fixed for

their cross-examination, on account of non-availability of counsel for the petitioners, the same was treated as Nil and therefore, the petitioners have shown a bonafide ground for allowing the application under Section 311 Cr.P.C. for recalling the witnesses.

Learned counsel for the petitioners has further argued that personal appearance of the petitioners before the trial Court was exempted by this Court vide order dated 16.07.2013, with the condition that the trial will proceed and they will be represented by counsel on all dates and therefore, there was no fault on the part of the petitioners not to cross-examine CW1 to CW4. It was noticed by the trial Court that the case pertains to the year 2003 and is at the stage of recording the statement under Section 313 Cr.P.C. and there is no justification in allowing the application under Section 311 Cr.P.C. and dismissed the same. The revisional Court had also taken the same view that the application has been filed at a much belated stage and on various dates, the petitioners had sought exemption from personal appearance and notice of accusation has already been served on the petitioners and the application is filed only to delay the proceedings. The revisional Court had also noticed that on the various dates, when the witnesses of the complainant were present, counsel for the petitioners failed to appear and to cross-examine them and therefore, the trial Court was right in dismissing the application under Section 311 Cr.P.C.

It is further submitted on behalf of the petitioners that since the petitioners were under this impression that they are being represented by a counsel and when they could not appear before the trial Court, non-bailable

warrants were issued against them and later on, the proceedings under Section 82 Cr.P.C. were initiated and the petitioners were never served with the same.

In reply, learned counsel for the respondent has opposed the prayer of the petitioners on the ground that the complaint is pending since 2003 and the petitioners have not shown any bonafide reasons for not cross-examining CW1 to CW4 on various dates, as their counsel had not appeared and the petitioners have misused the concession of exemption of personal appearance granted by this Court vide order dated 16.07.2013. It is further submitted that the order declaring the petitioners as proclaimed persons was also passed in accordance with law, as on the date, when the notice of accusation was to be served on the petitioners, they failed to appear before the trial Court and even on the subsequent date, when the non-bailable warrants were issued, despite having knowledge about pendency of the proceedings, they failed to appear and ultimately the publication under Section 82 Cr.P.C. was made and they were declared proclaimed persons.

After hearing learned counsel for the parties, though I find that in strict terms, the application under Section 311 Cr.P.C. may not be maintainable, as is apparent from the various orders passed by the trial Court that despite availing number of opportunities, when CW1 to CW4 were present for cross-examination, the petitioners' counsel had failed to turn up and cross-examine these witnesses, however, considering the fact that the petitioners being accused have a right to cross-examine the complainant's witnesses and put up their defence and also that they should

not be condemned unheard, I deem it appropriate to grant two effective opportunities to the petitioners to cross-examine the complainant's witnesses, at their own risk and responsibility. This will however be subject to payment of costs of Rs.25,000/- to be made to the complainant before cross-examination of the witnesses.

It is made clear that the complainant will produce all the aforesaid four witnesses on two dates and the trial Court will not adjourn the case further, if the petitioners failed to cross-examine the aforesaid witnesses on two given dates.

So far as the prayer of the petitioners in CRM-M-23476-2018 for setting aside the order dated 03.03.2014, declaring the petitioners as proclaimed persons, is concerned, the same is also allowed subject to payment of costs of Rs.25,000/-, for delaying the proceedings of the case. This costs will be deposited in the District Legal Services Authority, Chandigarh.

If the petitioners are not appearing before the trial Court, they will appear and apply for fresh bail and they will be released on bail by the trial Court and appearance of the petitioners will not be exempted any further till the disposal of the case.

Since the complaint pertains to the year 2003, the trial Court will make all endeavour to conclude the trial, from the date when the parties will appear before it, within a period of six months.

It is clarified that the amount of Rs.10.00 lacs, which is deposited with the Registrar General of this Court and is kept in FDR, shall

be returned to the petitioners in case they are acquitted by the trial Court. However, in the event of their conviction by the trial Court or imposition of any fine/costs/compensation, the said amount shall be adjusted towards the same and will be paid to the complainant as per the order of the trial court, if any, on final disposal of the case.

The parties are directed to appear before the trial Court on 28.03.2019. Both the petitioners will appear before the trial Court on that date and apply for fresh bail, as noticed above.

With the aforesaid observations, both these petitions are disposed of.

[ ARVIND SINGH SANGWAN ]  
JUDGE

15.03.2019  
*vishnu*

Whether speaking/reasoned                      Yes/No

Whether reportable                                      Yes/No