

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

120-A

**CRM-M-49754-2019 (O&M)
Date of decision: 22.11.2019**

Bhupinder Pal

.....Petitioner

Versus

Cholamandalam Investment and Finance Company Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Vivek Sharma Vashisht, Advocate
for the petitioner.

ARUN KUMAR TYAGI, J (ORAL)

The petitioner, arrayed as accused in Criminal Complaint No.2880 dated 18.03.2017 titled as 'Cholamandalam Investment and Finance Company Ltd. Vs. Bhupinder Pal', has filed the present petition under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for quashing of order dated 27.08.2019 passed by the learned Judicial Magistrate Ist Class, Ludhiana with further prayer to grant opportunity to the petitioner to cross-examine witness of the respondent/complainant.

Briefly stated the facts relevant for disposal of the petition are that the above said complainant filed complaint under Section 138 of the Negotiable Instruments Act, 1881 on the averments that the petitioner issued cheque No. 082436 dated 18.01.2017 for Rs.8,07,928/- drawn on Axis Bank Phullanwal, Branch Ludhiana in discharge of his liability under loan agreement for purchase of a vehicle which was on presentation dishonoured with remarks "funds

insufficient” and that the petitioner failed to pay the amount within 15 days of service of legal notice dated 23.02.2017 on him. During trial the petitioner failed to cross examine the complainant on which vide impugned order dated cross examination on the complainant was treated as nil. Feeling aggrieved the petitioner has filed the present petition.

Learned Counsel for the petitioner has submitted that the case was fixed for cross-examination of the complainant but the complainant could not be cross-examined because Counsel of the petitioner did not appear on 14.02.2019, 24.04.2019, 24.07.2019 and 20.08.2019. On 27.08.2019 cross-examination of the witness was treated as nil and case was adjourned for recording of statement of the petitioner under Section 313 of the Cr.P.C. The complainant could not be cross examined due to absence of the Counsel for the petitioner. The petitioner has now engaged a new counsel. The petitioner could not deposit the cost of Rs.500/- in District Legal Services Authority, Ludhiana inadvertently. The petitioner did not know the technicalities of law. In case opportunity to cross-examine the complainant is not granted to the petitioner, it will cause mis-carriage of justice to the petitioner. Therefore, impugned order dated 27.08.2019 may be set aside and the petitioner may be granted opportunity to cross-examine the complainant.

In view of the nature of relief sought in the case and also proposed to be granted by this Court, issuance of notice to the respondent is considered to be unnecessary.

In State of U.P. Vs. Shambhu Nath Singh : 2001(2) RCR

(Criminal) 390 Hon'ble Supreme Court observed as under :-

“witnesses tremble on getting summons from courts, in India, not because they fear examination or cross-examination in courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the courts awaiting their chance of being examined. The witnesses, per force, keep aside their avocation and go to the courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the infelicitous scenario in many of the courts in India so far as witnesses are concerned.....”

In that case, Hon'ble Supreme Court had given directions regarding examination of the witnesses in attendance and also conclusion of trial by taking up the case on day to day basis or by conducting trial by fixing dates in a session and impressed upon the Courts to avoid grant of unnecessary adjournments and take effective remedial measures by cancellation of bail or imposition of heavy costs.

Despite Hon'ble Supreme Court having given various directions in the catena of judgments for ensuring giving of due priority to timely examination of the witnesses, the witnesses are still harassed and every effort is made by the accused to delay their examination and more often than not the witnesses are harassed by asking them to appear again and again for their cross-examination by seeking unnecessary adjournments on the ground of non-availability of the defence counsel or even absence of one or other of the accused during trial.

The present case is also a befitting illustration of the dilatory tactics adopted by the accused during trial to delay examination of the witness. Strictly speaking, in the facts and circumstances of the case, no sufficient ground for giving the petitioner opportunity to cross examine the complainant is made out but on taking a liberal view, the

petitioner cannot be made to suffer for (mis)conduct of non appearance of his counsel in the case and also keeping in view oft quoted celebrated principles of law that justice must not only be done but must also be seen to be done and also that even a sinner must not be denied by law what is due to him, the petitioner may be granted one opportunity to cross examine the complainant. No prejudice would be thereby caused to the complainant as the complainant can be duly compensated for delay, inconvenience and expense thereby caused by an order for payment of costs.

In view of the above discussion and in the interest of justice, this petition is allowed and the trial Court is directed to give only one opportunity to the petitioner to cross-examine the complainant on payment of Rs.10,000/- as costs to the complainant. However, for this purpose the Trial Court will not grant any adjournment to the petitioner on the ground of absence of his counsel or due to absence of the petitioner with application for exemption from personal appearance. The petitioner shall cooperate in recording of evidence during trial of the complaint and in case of adopting of any dilatory tactics by seeking unnecessary adjournments by the petitioner, the Trial Court shall be at liberty to impose heavy costs and even cancel bail of the petitioner.

(ARUN KUMAR TYAGI)
JUDGE

22.11.2019

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