

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

Date of Order: July 19, 2019

(i) + CRL.M.C. 4436/2017 & CRL.M.A. 17772-73/2017
(ii) + CRL.M.C. 4106/2018
(iii) + CRL.M.C. 4110/2018
(iv) + CRL.M.C. 4121/2018
(v) + CRL.M.C. 4122/2018
(vi) + CRL.M.C. 4123/2018

RAMESH CHANDER GOYAL & ORS.Petitioners

Through: Mr. Deepak Vohra &
Ms. Madhu, Advocates

Versus

LEO ISPAT LTD & ANR.

LEO ISPAT LTD.Respondents

Through: Mr. Shakeel Sarwar Wani &
Mr. Himanshu Garg, Advocates for
respondent-LEO ISPAT LTD.
Mr. Izhar Ahmed, Additional
Public Prosecutor for respondent
No.2-State in Crl.M.C. 4436/2017

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

In proceedings under Section 138 The Negotiable Instruments Act, 1881, trial court vide impugned order of 26th October, 2017 has declined petitioner's application under Section 311 Cr.P.C. to cross-examine complainant (CW-1) regarding purported contradictions in collateral proceedings.

With the consent of learned counsel for the parties, the above captioned petitions have been heard together and are being disposed of by this common order.

It is a matter of record that petitioners' application under Section 145(2) of The Negotiable Instruments Act, 1881 was dismissed way back in November, 2011 and in view thereof, respondent/complainant was not cross-examined by petitioners. Trial court in the impugned order has noted that there is inordinate delay of five years in filing application under Section 311 Cr.P.C. and this application has been filed just to delay the proceedings and so, cost of ₹2,000/- in each of the six complaint cases had been imposed by the trial court.

Learned counsel for petitioners submits that petitioners had come to know about contradictory statements made by respondent/complainant in January, 2016 and so, there was no delay in filing the application under Section 311 Cr.P.C. It is submitted that respondent/complainant in the criminal complaints under Section 200 Cr.P.C. has admitted that ₹46 lacs was received by respondent/complainant, whereas in the instant complaints under Section 138 of The Negotiable Instruments Act, 1881, respondent/complainant has denied it. It is submitted that respondent/complainant needs to be confronted with the aforesaid contradiction, for just decision of the case and contradictory stand taken by respondent/complainant is required to be put to respondent/complainant in cross-examination to bring out the truth and for this purpose, two effective opportunities be granted to petitioners.

On the contrary, learned counsel for respondent/complainant supports the impugned order and submits that evidence of respondent/complainant was recorded in the year 2012 and petitioners with sole intention of delaying the proceedings, has filed the application under Section 311 Cr.P.C., as petitioner in his chief-examination before the trial court has already deposed about the alleged contradiction.

Upon hearing and on perusal of impugned order and material on record, I find that the cross-examination of respondent/complainant on the contradiction aspect and in respect of stand taken by petitioners in chief-examination is essential for just decision of the case. For the delay occasioned, petitioners can always be put to terms.

In view of the above, impugned orders are hereby set aside and petitioner's application under Section 311 Cr.P.C. is allowed subject to cost of ₹1 lac in each of the six complaint cases. The cost imposed shall be deposited by petitioners with the trial court on the date so fixed and thereafter only, respondent/complainant shall step into the witness box. It is made clear that only one effective opportunity be granted to petitioner to cross-examine the respondent/complainant on a date so fixed by the trial court. After respondent/complainant's cross-examination is recorded, the cost so deposited shall be released to respondent/ complainant.

With aforesaid directions, these petitions and applications are disposed of, while not commenting on the merits of the case.

(SUNIL GAUR)
JUDGE

JULY 19, 2019/r
