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

+ CRL M.C. No. 4498/2019 & CRL.M.A. 35349/2019, CRL.M.A. 8061/2020

BOOM BUYING PVT. LTD. & ANR. Petitioners

Through: Mr. Chandan Bhatia, Ms. Rukmini
Mukherjee, Advs.

versus

ARCHANA SHUKLA Respondent

Through: Mr. Sumit Kariwal, Adv.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

24.07.2020

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(hearing through Video Conferencing)

In terms of the order dated 9.7.2020 the copies of the ordersheets from 8.4.2019 onwards have been placed on record and rather the proceedings sheets from 20.7.2017 onwards till the date of hearing 17.1.2020 have been filed on behalf of the petitioners.

The petitioners vide the present petition have assailed the order dated 16.7.2019 of the learned Metropolitan Magistrate-04, N.I.Act in CC No. 462255/2016 vide which the right of the applicanta to cross-examine the complainant was closed. On the date 16.7.2019, a statement had been made on behalf of the petitioners by the clerk of the counsel that the main counsel was busy in the Hon'ble Supreme Court. The learned Trial Court observed to the effect that the matter was fixed for Cross Examination by way of last opportunity and that the matter was at that stage since 20.4.2018 and in view of the same the opportunity to cross-examine the complainant was closed.

It has been submitted on behalf of the petitioners that the applicants had been diligent enough in the instant case repeatedly and had rather even filed an application under Section 145(2) of the N.I.Act, seeking permission to cross-examine the complainant which had in fact been granted when the complainant had chosen not to file the response thereto. Reliance in relation thereto is placed on behalf of the petitioner on the proceedings for the date 16.11.2017 of the learned Trial Court of the Metropolitan Magistrate-04, N.I.Act, in the said complaint case where it has been observed to the effect:

"16.11.2017

Present: None for the complainant.

Ms.Gopashree Raman, Proxy counsel for the accused.

Matter was fixed for furnishing reply to the application u/s 145(2) N.I.Act. None has appeared for the complainant today. Perusal of record shows that today is the 3rd effective opportunity given to the complainant for filling the reply.

Exemption application filed on behalf of accused. Heard. Allowed for today only.

Put up for orders on the application u/s 145(2) NI Act at 04.00 p.m.

*(NIHARIKA KUMAR)
MM-04/NI ACT/SD SAKET
NEW DELHI/16.11.2017*

At 4.00

Present:- None for the complainant.

Counsel for the accused.

*Considerign(sic)the averment made in the application u/s 145(2) NIAct it appears that the accused has a valid defence to make and in order to prove the same, cross examination of complainant witnesses is essential. **Therefore, the said application u/s 145(2) NI Act is allowed.***

Considering the nature of evidence, the cheque amount in question in the present case, I am of the opinion that a

sentence of imprisonment for a term exceeding one year may have to be passed and it is undesirable to try the present case summarily and therefore, the present case shall be tried as a summons case under Chapter 20 of the Criminal Procedure Code.

Put up for cross-examination of the complainant (CW-1) on 16/02/2018.

*(NIHARIKA KUMAR)
MM-04/NI ACT/SD SAKET
NEW DELHI/16.11.2017 "*

The matter vide order dated 16.11.2017 is indicated to have been listed for cross-examination of PW-1 for the date 16.2.2018.

On 16.02.2018 the learned Presiding Officer of the Trial Court was on leave and the matter was thus renotified for the date 20.4.2018. The proceedings reflected in the impugned order dated 16.7.2019 mentioned to the effect of the date 20.4.2018 on which date the matter had been fixed for the same purpose vide order dated 16.2.2018 in terms of the proceedings dated 16.11.2017. As observed hereinabove the learned Presiding Officer was on leave. On the date 20.4.2018, the proceedings read to the effect:

20.4.2018

Present: Complainant in person with counsel Sh. Sumit Kaliwal.

Accused in person.

Matter was fixed for cross-examination of the complainant CW-1 and an adjournment has been sought on behalf of the accused on the ground that his counsel is not available. Heard. Adjournment granted by way of last and final opportunity.

Put up for cross examination of the complainant CW-1 on 23/07/2018 by way of last and final opportunity.

*(NIHARIKA KUMAR)
MM-04/NI ACT/SD SAKET
NEW DELHI/20.04.2018*

which undoubtedly indicate that a prayer for adjournment was made on behalf of the accused i.e. for the petitioner herein, and as the counsel was not available adjournment by way of a last and final opportunity was granted for the date **23.07.2018**.

On **23.7.2018**, there was no representation on behalf of the complainant and that the matter was taken up at 11:42 a.m. when the learned counsel for the complainant was present **and an application for exemption was filed on behalf of the complainant which was allowed for that day subject to costs of Rs.1000/-**. The proceedings of the date 23.7.2018 read to the effect:

" 23.07.2018

Present: None for the complainant.

Counsel for the accused.

Matter is fixed for cross-examination by way of last and final opportunity. None has appeared for the complainant on the first all.

Put up at 11:30 am.

*(NIHARIKA KUMAR)
MM-04/NI ACT/SD SAKET
NEW DELHI/23.07.2018*

At 11:42 am.

Present: Counsel for the complainant.

Counsel for the accused.

Exemption application filed on behalf of complainant.

*Heard. Allowed for today only **subject to cost of Rs.1000/-**.*

*Put up on **20/09/2018**.*

*(NIHARIKA KUMAR)
MM-04/NI ACT/SD SAKET
NEW DELHI/23.07.2018"*

The proceedings of the date 20.9.2018 indicate that complainant was present and an application for exemption was filed on behalf of the accused which was allowed subject to costs of Rs.1500/- and that the matter was renotified for the date 07/12/2018. On 7.12.2018 an application for exemption was filed on behalf of the accused, i.e., the petitioners herein on that ground that he had to appear in Bareli Court that date and that the counsel was even directed to file the copy of the order sheets specifying the presence on both the dates i.e., 5.12.2018 and 7.12.2018 with the matter having been renotified for the date 31.1.2019 with it having been observed that no further opportunity would be granted to the applicant for cross-examination of the complainant.

In reply to a specific Court query learned counsel for the petitioner submits that the copies of the ordersheets of the date 5.12.2018 and 7.12.2018 of the Bareli Court have been placed on the record of the learned Trial Court. The proceedings dated **31.1.2019 indicate that when the matter was taken up there was no representation on behalf of the complainant though the counsel for the accused was present in the matter and at 11.31 a.m. on 31.1.2019 learned counsel for the complainant and learned counsel for the accused were present however and application was filed on behalf of the complainant which was allowed for the day and the matter was adjourned for the date 8.4.2019 for the cross-examination of the complainant.**

On 8.4.2019, the matter was renotified for cross-examination and payment of costs for the date 16.7.2019. The proceedings dated 08.04.2019 read to the effect:

"08.04.2019

Present: Complainant with counsel.

Counsel for the accused.

Matter is fixed for CE and payment of cost.

Put up for same purpose on 16.07.2019.

(NIHARIKA KUMAR)

MM-04/NI ACT/SD SAKET

NEW DELHI/204.2018",

The matter was thus renotified for the date 16.7.2019, i.e., the date on which the impugned order was passed on which date the counsel for the petitioner was stated to be before the Hon'ble Supreme Court.

As per averments made in the petition it has been submitted on behalf of the learned counsel for the petitioner placing reliance on the entry passes placed on the record at pages 54 and 55 to indicate that vide the entry pass No. 235873 of the Supreme Court the petitioner no.2 Mr.Rakesh Singh, the director of petitioner No.1 had to appear before the Hon'ble Supreme Court on that date for CG 12 Item No. 14 and that the entry passes had been issued at 10:54 a.m.

Though the prayer made by the petitioners has been vehemently opposed on behalf of the respondent, taking into account the factum that there has been non-representation on behalf of the complainant on several occasions, opportunity was granted to the petitioner to conduct the cross-examination and taking into account also the factum that on date 16.7.2019, the date of impugned order, the petitioner no.2 is indicated to have been before the Hon'ble Supreme Court as indicated from the passes placed on record , in the interest of justice and for the balance of convenience between both sides, ***the impugned order dated 16.7.2019 of the learned Trial Court***

closing the right of cross-examination of the complainant to be conducted by the accused, i.e., the petitioners herein in CC No. 462255/2016 is set aside subject to payment of costs of Rs.10,000/- by the petitioners herein to the respondent herein and subject to only one single opportunity being granted to the petitioners herein to conduct the cross-examination of the complainant on the date that would be fixed by the learned Trial Court.

The petition and the accompanying applications are disposed of accordingly.

A copy of this order be sent to the learned Trial Court.

ANU MALHOTRA, J

JULY 24, 2020/sv