

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

CRM-M-6066 of 2021

Date of Decision: 16.02.2021

M/s Sebro Machine Tools Pvt. Ltd. And others

.....Petitioners

Versus

M/s Jyoti Industrial Coporation

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. T.P.S Kang, Advocate and

Mr. Neeraj Sharma Advocate, for the petitioners.

HARINDER SINGH SIDHU, J

In this petition the petitioners have assailed the order dated 15.02.2020 passed by the Learned Judicial Magistrate, 1st Class, Faridabad, whereby two applications viz. (i) under Section 45 read with Section 73 of Negotiable Instruments Act for examination of the hand writing expert and for the report of the FSL and (ii) under Section 311 of Cr. P.C. for calling the witness Nos. 8, 9, 10 and 11 (cited by the complainant) for examination have been dismissed.

Respondent-complainant filed a complaint dated 22.03.2017 under Section 138 of the Negotiable Instruments Act before the Ld. JMIC, Faridabad against the petitioners alleging that the goods were supplied to the petitioners and a sum of Rs. 22,51,874/- was due to them. In order to discharge its liability towards part payment, petitioner no. 3 issued a cheque bearing No.000633 dated 20.01.2017 for Rs. 11,00,000/- drawn on Kotak Mahendra Bank, New Delhi, which was dishonored vide memo dated 03.02.2017 with the remarks "Funds Insufficient".

On being summoned the petitioners put in appearance before

the Ld. Magistrate. When the case was fixed for evidence of the petitioners, the petitioners moved an application for keeping the proceedings in abeyance pending the decision in case titled as “Nitin Sethi and Anr. Vs. M/s Devender Kalra and others” which had been filed by them before the Court at New Delhi. The Ld. JMIC, Faridabad dismissed the said application on 18.05.2019. Vide the same order it also closed the defence of the petitioners.

The petitioners assailed the order dated 18.05.2019 by filing CRM-M-26089 of 2019. The petitioners did not press their prayer for keeping the proceedings in abeyance. The petition was disposed of by this Court vide order dated 01.07.2019 with direction to Ld. JMIC to give 'one effective opportunity' to the petitioners to lead their defence evidence subject to payment of Rs.25,000/- as costs.

The operative part of the order is reproduced below:

“ Having heard Ld. Counsel for the petitioner this Court finds that even before the Trial Court started adjourning the case on joint request, the opportunity was granted to the petitioners to lead their evidence in defence. The order dated 8th January, 2019 would show that even the last opportunity was granted to the petitioners to produce their evidence in defence. Therefore this Court does not find any illegality or perversity with the order on the face of it warranting any interference with the same so far as the merits of the case are concerned.

However since the petitioners are accused of an offence for which they can suffer even imprisonment, therefore, lest the petitioners should have any grievance, though mistaken, that they have not been granted fair opportunity to defend themselves against the charge, it would not be unjustified to grant the one more opportunity

to lead their evidence in defence, though by putting them to some financial burden.

In view of the above the present petition is disposed of with a direction to the trial court to provide one effective opportunity to the petitioners to lead their defence evidence, however subject to payment of Rs. 25,000/- as costs. The amount is ordered to be deposited with the Institute for Blind, Sector 26, Chandigarh within a period of two weeks from today.

It is further clarified that the trial court shall grant the opportunity to the petitioners to lead their defence evidence only after they produce the receipt of having deposited the costs as mentioned hereinabove.”

It is recorded in the impugned order and it has not been denied by the Ld. Counsel for the petitioners that after the passing of this order the petitioners examined two witnesses in defence.

Thereafter, the petitioners moved two applications namely (i) under Section 45 read with Section 73 of Negotiable Instruments Act for examination of the hand writing expert and for the report of the FSL and (ii) under Section 311 of Cr. P.C. for calling the witness Nos. 8, 9, 10 and 11 for examination which have been dismissed vide the impugned order with costs of Rs.3000/- each.

Regarding first application the contention of the petitioners was that the cheque in question had been stolen by Mr. Davinder Kalra @ Raju Kalra, proprietor of the complainant Company with the help of unknown person and was misused by hatching a criminal conspiracy with the complainant. Neither the handwriting nor the ink of the cheque matched in any manner. The cheque had been manipulated and fabricated by the complainant. Said Davinder Kalra was unable to explain as to how the

cheque, which was a bearer cheque, was presented and how it was crossed and made into an account payee cheque. The complainant even did not know the whereabouts of the employee of the petitioner Company who had handed over the cheque to him. It was submitted that the handwriting as well as ink used in the disputed cheque were admitted by the complainants' witnesses, therefore, it was necessary to send the disputed cheque for obtaining FSL report to clear the doubts. Learned trial Court while dismissing the application noted that the signatures on the cheque had been admitted by the accused. The petitioner while recording his defence statement under Section 263 (g) had specifically admitted the signatures on the cheque in question. The trial Court relied upon a decision of this Court in **Gurmit Singh vs. State of Haryana, 2012 (2) RCR (Crl.) 306** wherein it has been held that once an accused has admitted the signatures on the cheque, he could not escape his liability on the ground that the same had not been signed by him. When the blank cheque is signed and handed over, it means that the person signing it has given implied authority to the holder of the cheque to fill the blank which has been left while signing the cheque. Moreover, if there was any manipulation/alteration in the cheque by the complainant, there was no explanation as to why the petitioner slept over the matter for such a long period. Further the petitioners had been granted only one effective opportunity vide order dated 01.07.2019 which they had availed of. It was thus concluded that the application had been filed merely to delay the matter. Accordingly it was dismissed with costs of Rs.3000/-.

In respect of the second application under Section 311 Cr.P.C, it was submitted on behalf of the petitioners that during his cross examination on 30.07.2019, DW1 Nitin Sethi had referred to various

Departments and authorities namely Wealth and Sales Tax etc. Hence the petitioners were seeking permission to examine the said witnesses for just adjudication of the case as it was necessary in view of the facts as emerging from the cross examination of the complainant on 30.07.2019.

Learned trial Court after referring to the order of this Court dated 01.07.2019 and noticing that in compliance therewith, the petitioner had already examined two defence witnesses, dismissed the application holding that it was also a ploy to delay the proceedings. Learned trial Court also noted that the persons sought to be examined by the petitioner had been arrayed as witnesses by the complainant at the time of filing the complaint. The petitioners was aware of them since the very filing of the complaint but they chose to sleep over their right. There was thus no warrant for permitting the petitioner to bring additional evidence at the stage of final arguments.

In this case vide order dated 8th January, 2019 the petitioners were granted last opportunity to produce their evidence in defence. Later vide order dated 18.5.2019 their application for keeping the proceedings in abeyance pending the decision in case titled as “Nitin Sethi and Anr. Vs. M/s Devender Kalra and others” which had been filed by them before the Court at New Delhi was dismissed by the Ld. JMIC, Faridabad who also vide same order also closed the defence of the petitioners. That order was challenged by the petitioners before this Court by filing CRM-M-26089 of 2019. This Court noted that there was no illegality in the order closing their defence evidence. However lest they have any grievance, solely with a view to grant a fair opportunity to the petitioners to defend themselves against the charge the petition was disposed of with direction to Ld. JMIC to give

`one effective opportunity' to the petitioners to lead their defence evidence subject to payment of Rs.25,000/- as costs. Thereafter the petitioners examined two witnesses in their defence and later moved the two applications which were dismissed vide the impugned order holding that the same had been moved solely with a view to delay the proceedings. In the facts aforesaid there does not appear to be any illegality or perversity in the order. The petitioners have not been able to show as to how the evidence of the witnesses sought to be summoned is absolutely essential for the just decision of the case.

This petition is accordingly dismissed.

February 16, 2021
manoj

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No