

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

CRL.M.C. 480/2020 and CRL.M.A. 1999/2020,
CRL.M.C. 490/2020 and CRL.M.A. 2034/2020

Date of Decision: 11.11.2021

IN THE MATTER OF:

SRINIWAS CITHAPURAM & ORS. Petitioners
Through: Mr. Yogesh Kaushik, Advocate
Versus

M/S. SPEEDWING LOGISTIC SOLUTIONS P LTD. Respondent
Through: Mr. J.P. Singh, Advocate

SRINIWAS CITHAPURAM & ORS. Petitioners
Through: Mr. Yogesh Kaushik, Advocate
Versus

M/S SPEEDWING LOGISTIC SOLUTIONS P LTD. Respondent
Through: Mr. J.P. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petitions have been filed under Section 482 Cr.P.C. on behalf of the petitioners assailing the orders dated 30.09.2019 passed by the learned ASJ-02, South-West District, Dwarka Courts, Delhi in CR Nos. 17/2018 and 18/2018, arising out of CC Nos. 4994232/2016 and 4994233/2016 filed under Section 138 read with Sections 141/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the NI Act'), vide which the revision petitions filed on behalf of the petitioners seeking permission to lead defence evidence were dismissed.

The Sessions Court by passing the impugned orders has upheld the order dated 17.03.2018 passed by the learned Metropolitan Magistrate (NI Act)-04, Dwarka Courts, Delhi in the aforesaid criminal complaints, vide which the applications filed by the petitioners under Section 311 Cr.P.C. were dismissed and their right to lead defence evidence closed. The petitioners further seek directions for recalling of CW-1 (AR of the company) for further cross-examination. Since the parties involved are common, both petitions are taken up for hearing together and shall be disposed of by a common order.

2. The brief facts necessary for consideration of the present petitions are that the aforesaid complaints came to be filed by the respondent on 08.11.2013, wherein it was stated that as on 31.08.2013 there was an outstanding debt of Rs. 68,22,515/- payable by the petitioners. In order to settle the accounts, the petitioners issued six cheques to the respondent, aggregating to Rs. 57,00,000/- till 15.01.2013, and further assured to settle the remaining accounts later. However, the cheques, on being presented, got dishonored with the remarks '*account closed*'. As a result, the aforesaid two complaints came to be filed and notices under Section 251 Cr.P.C. were framed against the petitioners on 13.02.2014. The petitioners are stated to have admitted their liability to the tune of Rs.18,00,000/- in both the complaint cases, however, they failed to honor their commitments.

3. On 17.11.2014, the petitioners placed on record two agreements dated 19.09.2012 and 05.12.2012. The trial proceedings continued and CW-1 was examined and discharged on 05.02.2015. The statements of the petitioners under Section 313 Cr.P.C. were recorded on 01.07.2015, whereafter the matter was posted for recording of defence evidence on 25.07.2015. Despite

being granted number of opportunities to lead defence evidence, the petitioners failed to avail of the same. Once the defence evidence was closed, they filed an application under Section 311 Cr.P.C. seeking recall of CW-1 which came to be dismissed vide order dated 27.11.2017. The said order was not challenged by the petitioners before any Court. Another application under Section 91 Cr.P.C. was filed by the petitioners, seeking direction to the complainant to file original agreement dated 05.12.2012. The respondent/complainant did not deny the execution of the said agreement and resultantly the aforesaid application also came to be dismissed on 30.01.2018. While passing the said order, the Trial Court gave last opportunity to the petitioners to lead defence evidence.

4. The petitioners, despite dismissal of their earlier application filed under Section 311 Cr.P.C., preferred another application under Section 311 Cr.P.C. seeking same relief of recall of CW-1 for confronting him with the agreement dated 05.12.2012. The aforesaid application also came to be dismissed by the Trial Court vide order dated 17.03.2018. It was noted in the order that factum of execution of the agreement dated 05.12.2012 was very much in the knowledge of the petitioners prior to cross-examination of CW-1 as it was placed on record by the petitioners themselves alongwith the list of documents filed on 17.11.2014. Despite being aware, the petitioners chose not to cross-examine CW-1 with respect to the aforesaid documents. The Trial Court was also constrained to note that the petitioners were guilty of delaying the proceedings on one excuse or the other. In this backdrop and the fact that the petitioners were not appearing, the Trial Court issued non-bailable warrants against the petitioners.

5. The aforesaid orders passed by the Trial Court, dismissing the petitioners' application seeking recall of CW-1, were challenged before the Sessions Court which came to be dismissed vide the impugned orders. The Sessions Court, after noting entire gamut of facts, noted that the matter was pending before the Trial Court for defence evidence since 16.12.2017. It was also noted that factum of execution of agreement dated 05.12.2012 was not disputed by the complainant inasmuch as the complainant himself was relying on the aforesaid document. The Sessions Court also came to the conclusion that the petitioners could not be permitted to fill lacuna in their case. It is these orders, which are under challenge in the present petitions.

6. Learned counsel for the petitioners has contended that one opportunity may be granted to cross-examine CW-1 and to lead defence evidence.

7. Learned counsel for the respondent, on the other hand, has vehemently opposed the present petitions. He submits that the present petitions pertain to complaints filed in the year 2013 and for the last 6 years the trial was pending at the stage of defence evidence. It is submitted that final arguments were addressed on 05.05.2018, 26.07.2018 as well as on 22.10.2019 and the petitioners filed the second application under Section 311 Cr.P.C. without disclosing the factum of dismissal of the first application. It is further submitted that in the revision petitions filed against the dismissal of the second application under Section 311 Cr.P.C., the prayers were restricted only to lead defence evidence. It is also submitted that the petitioners cannot be permitted to abuse the process of law by delaying the proceedings for one reason or the other.

8. I have heard learned counsels for the parties and have also gone through the case records.

9. It is noted that initially CW-1 was cross-examined on 05.02.2015 on behalf of the petitioners by their erstwhile counsel, who is stated to have expired in November, 2016. After the new counsel took over, an application under Section 311 Cr.P.C. came to be filed immediately. Thereafter, multiple applications were filed not only under Section 311 Cr.P.C. but also under Section 91 Cr.P.C. While disposing of each of such applications, the Trial Court as well as the Revisional Court observed that the petitioners were repeatedly filing applications to delay the proceedings.

10. A perusal of the order sheets placed on record would show that the petitioners were directed to lead defence evidence as early as on 25.07.2015 and thereafter the matter came to be listed on more than 25 occasions. Although on some occasions, the matter could not be taken up on account of valid reasons, this Court is constrained to observe that on more than 20 occasions, the matter could not be proceeded with as exemption applications were filed on behalf of the petitioners. Insofar as the prayer seeking recall of CW-1 is concerned, it has been contended that the earlier counsel failed to cross-examine the said witness on the aspect of agreement dated 05.12.2012 and this error could be detected only when the present counsel took over.

11. As noted earlier, prior to cross-examination of CW-1 on 05.02.2015, the petitioners themselves placed on record a copy of agreement dated 05.12.2012. Admittedly, the respondent has not disputed the factum of execution of the aforesaid agreement.

12. Before proceeding to render an opinion on the facts of the case, I deem it apposite to recapitulate the scope of judicial superintendence

exercisable by this Court under Article 227 of the Constitution of India and Section 482 Cr.P.C., as explicated by the Supreme Court in State (NCT of Delhi) v. Shiv Kumar Yadav and Another reported as **2016 (2) SCC 402**.

Relevant excerpt from the case is reproduced hereunder:-

“28. It will also be pertinent to mention that power of judicial superintendence under Article 227 of the Constitution and under Section 482 CrPC has to be exercised sparingly when there is patent error or gross injustice in the view taken by a subordinate court. A finding to this effect has to be supported by reasons. In the present case, the High Court has allowed the prayer of the accused, even while finding no error in the view taken by the trial court, merely by saying that exercise of power was required for granting fair and proper opportunity to the accused. No reasons have been recorded in support of this observation. On the contrary, the view taken by the trial court rejecting the stand of the accused has been affirmed. Thus, the conclusion appears to be inconsistent with the reasons in the impugned order.

29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

- (i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross-examination. They were under no handicap;*
- (ii) No finding could be recorded that the counsel appointed by the accused were incompetent particularly at the back of such counsel;*
- (iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;*
- (iv) The trial court as well as the High Court rejected the reasons for recall of the witnesses;*
- (v) The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;*

(vi) Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;

(vii) Mere change of counsel cannot be ground to recall the witnesses;

(viii) There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;

(ix) The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall i.e. denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;

(x) There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.”

(emphasis added)

13. From the judicial dictum outlined hereinabove, it is apparent that mere change of counsel cannot be a ground to recall a witness. Further, the agreement dated 05.12.2012 was always in the knowledge of the petitioners, and yet, the first application for recalling CW-1 came to be filed after two years of his cross-examination. As such, the prayer insofar as recall of CW-1 is concerned, stands rejected.

14. Learned counsel for the petitioners has prayed that only one opportunity may be granted to the petitioners to lead defence evidence and the petitioners undertake to examine the defence witnesses in one day.

15. Doubtless, the petitioners are guilty of delaying the trial, however, this Court cannot lose sight of the fact that a fair trial is the hallmark of criminal procedure. It entails not only the rights of the victims but also the interest of the accused. It is the duty of every Court to ensure that fair and proper opportunities are granted to the accused for just decision of the case. In furtherance of the above, adducing of evidence by the accused in support of his defence is also a valuable right and allowing the same is in the interest of justice.

16. Accordingly, this Court is of the opinion that interest of justice would be served if the petitioners are allowed to lead defence evidence, subject to their examining the defence witnesses on one single day. The cross-examination of all such defence witnesses shall also be conducted on the same day.

17. It has been informed that the next date of hearing fixed before the Trial Court is 13.12.2021.

18. In view of the undertaking given on behalf of the petitioners, it is directed that the matter be listed before the concerned Trial Court on 22.11.2021 for the petitioners to take appropriate steps for leading their defence evidence. The same shall however be subject to payment of cost of Rs.30,000/- in each case, to be payable to the respondent, within a period of two weeks from today.

19. It is clarified that the Trial Court shall grant only one opportunity to the petitioners and in case, the petitioners fail to avail the said opportunity, the Trial Court shall proceed further with the matter in accordance with law.

20. Considering the fact that the complaint cases relate to the year 2013, the Trial Court shall make an endeavor to expedite the trial and conclude the same within a period of three months from the date of passing of this order.

21. With the above directions, the present petitions are disposed of alongwith the pending applications.

22. A copy of this order be communicated electronically to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

NOVEMBER 11, 2021

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[Click here to check corrigendum, if any](#)

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