

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3402/2021, CRL.M.A. 20546/2021 and CRL.M.A. 20547/2021**

Date of Decision : 21.12.2021

IN THE MATTER OF:

CENTURY ALUMINIUM MANUFACTURING COMPANY LTD. &
ANR. Petitioners

Through: Mr. Pallav Saxena, Mr. Sorabh Dahiya
and Mohammad Nausheen Samar,
Advocates

versus

HERO FINCORP LTD. Respondent

Through: Mr. Aditya Prasad, Mr. Amit Kumar
Sinha and Mr. Sriram Kamal, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioners assailing the order dated 03.12.2021 passed by the learned M.M. (N.I. Act), Digital Court-01, South District, Saket Courts, New Delhi in CC No. 67/2020, vide which the petitioners' application under Section 145(2) N.I. Act seeking cross-examination of the complainant witness has been dismissed.

2. Learned counsel for the petitioners/accused submits that on 03.12.2021, the Trial Court had framed notice under Section 251 Cr.P.C., to which the accused pled not guilty. On the same date, an application already filed on 10.09.2021 under Section 145(2) N.I. Act was pressed, however the same was dismissed by the Trial Court without assigning any reason, except for saying that no valid ground of defence had been put forward by the accused. Learned

counsel has placed reliance on the decisions rendered by this Court in Ashish Aggarwal v. Sushil Kumar reported as **2020 SCC OnLine Del 1761** and Sunil Aggarwal v. Sunil Gupta and Ors. reported as **MANU/DE/4676/2019** in support of his case. He prays that the application filed on behalf of the accused under Section 145(2) N.I. Act may be allowed, and undertakes that in case the said relief is granted, the accused will not seek any adjournment before the Trial Court in that regard.

3. Issue notice.

4. Mr. Aditya Prasad, Advocate appears for the respondent and accepts notice. He submits that the order dated 03.12.2021 would show that the Trial Court had gone through the defence put forward in reply to the notice framed under Section 251 Cr.P.C., and thus, the same is not liable to be set aside.

5. I have heard learned counsels for the parties and also perused the material placed on record.

6. Before advertng to the facts of the present case and the position of law on the subject, it is deemed apposite to reproduce Section 145(2) N.I. Act which reads as under:-

“145. Evidence on affidavit.-

xxx

(2) The court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

7. A bare perusal of the provision would show that once an application is filed by the accused thereunder, the concerned Court is obliged to summon the person who has given evidence on affidavit in terms of Section 145(1) N.I. Act. The Supreme Court in Radhey Shyam Garg v. Naresh Kumar Gupta reported as **(2009) 13 SCC 201** has expounded the law on the issue as follows:-

“10. ...Whereas sub-section (1) of Section 145 uses the term “may”, sub-section (2) thereof uses the term “shall”. The first part of the aforementioned provision must be read with sub-section (1) of Section

145. It, therefore, merely points out to the discretionary power of the court conferred upon it by reason thereof. The court, however, has no other option but to summon and examine any person who has given evidence on affidavit as to the facts contained therein if an application is filed either by the prosecution or the accused. Section 145 must be read reasonably.

(emphasis added)

8. Likewise, in Mandvi Cooperative Bank Limited v. Nimesh B. Thakore reported as **(2010) 3 SCC 83**, the Supreme Court has enunciated the mandate contained in Section 145(2) N.I. Act in the following terms:-

“30. ...Mr Ranjit Kumar, learned Senior Advocate, appearing for the appellant in appeal arising from SLP (Crl.) No. 4760 of 2006 pointed out that sub-section (2) of Section 145 uses both the words, “may” (with reference to the court) and “shall” (with reference to the prosecution or the accused). It was, therefore, beyond doubt that in the event an application is made by the accused, the court would be obliged to summon the person giving evidence on affidavit in terms of Section 145(1) without having any discretion in the matter. There can be no disagreement with this part of the submission...”

(emphasis added)

9. On a conspectus of the statutory provision that is Section 145 N.I. Act and the aforesaid decisions, it is discernible that sub-section (2) of Section 145 N.I. Act mandates the concerned Court to summon the person giving evidence on affidavit in terms of Section 145(1) N.I. Act if an application is filed by the accused seeking such relief. The discretion of the Court is exercisable in the event when no such application has been filed on behalf of either party and the Court is acting *suo motu*.

10. In the present case, an application under Section 145(2) N.I. Act was filed on behalf of the accused on 10.09.2021. It has been averred that mediation talks were going on between the parties, and on 16.11.2021, the complainant agreed before the Trial Court to supply its statement of account to the accused in furtherance of the negotiations. However, on the next date of hearing, i.e. 03.12.2021, the complainant did not provide the statement of account and notice

came to be framed against the accused under Section 251 Cr.P.C. Upon pressing of the application filed earlier under Section 145(2) N.I. Act on behalf of the accused, the Trial Court dismissed the same, observing that no valid ground for defence had been made out.

11. Under the facts and circumstances of the case, this Court is of the opinion that the Trial Court committed an error in dismissing the application of the accused, which was filed prior to framing of notice under Section 251 Cr.P.C. and pressed even at the time of framing thereof. The impugned order appears to have been passed in ignorance of the mandate contained in Section 145(2) N.I. Act, which in terms of the aforementioned decisions, obliges the concerned Court to summon a person who has given evidence on affidavit in terms of Section 145(1) N.I. Act if an application is filed by the accused.

12. In view of the foregoing discussion and considering the stage of the case, the petition is allowed and the impugned order is set aside.

13. The petitioners' application under Section 145(2) N.I. Act filed on 10.09.2021 is allowed. The Trial Court shall grant the petitioners/accused an opportunity to cross-examine the complainant witness on one date only, unless in the opinion of the Court one more date is required for completion of the cross-examination.

14. The petition is disposed of in the above terms, alongwith the pending applications.

15. A copy of the order be communicated to the concerned Trial Court through the concerned Principal District & Sessions Judge.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 21, 2021

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Click here to check corrigendum, if any