

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRM-M-46258-2022

Date of decision : 11.10.2022

M/s B.S.Enterprises

... Petitioner

Versus

Vinod Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Kamal Chaudhary, Advocate
for the petitioner.

VIKAS BAHL, J.(ORAL)

This is a petition under Section 482 Cr.P.C. for quashing of order dated 15.02.2019 vide which opportunity to the petitioner to cross-examine the complainant had been declined. Challenge is also to the order dated 09.09.2022 vide which the application filed under Section 311 Cr.P.C. by the petitioner to recall the complainant for cross-examination has been dismissed and also to the order dated 17.09.2022, passed by the Additional Sessions Judge, Faridabad vide which the revision petition filed against the order dated 15.02.2019 has been dismissed both on merits as well as on account of delay and latches.

Learned counsel for the petitioner has submitted that the petitioner is an accused in complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short "N.I. Act") and seeks one opportunity to cross-examine the complainant, and prays that order dated 15.02.2019 vide which the said opportunity has been declined, be set aside and even the

petitioner against the said order dated 15.02.2019 had been dismissed, be also set aside.

This Court has heard learned counsel for the petitioner and has perused the paper book.

The present case is a case in which the petitioner has made every possible effort to delay the proceedings which have been instituted under Section 138 N.I. Act against him, without any justifiable cause. The following seriatim of facts would demonstrate the same:-

i) **12.02.2018** (Page 9)- Complaint under Section 138 N.I. Act filed by the respondent with respect to dishonour of cheque no.856919 dated 02.01.2018 for the amount of Rs.2 lacs.

ii) **29.05.2018** (Page 23)- The trial Court passed the following order:-

“Plea of defence of accused under Section 263(g) Cr.P.C. recorded. Adjournment sought. Now to come up on 17.07.2018 for DWs, if any and for filing application under Section 145(2) of N.I.Act.”

iii) **17.07.2018** (Page 23)- The trial Court passed the following order:-

“Today the case was fixed for DWs, if any and for filing complaint under Section 145(2) of NI Act. No DW is produced. An application under Section 145(2) of NI Act for cross examination of complainant filed on behalf of accused. Since it is the fundamental right of the accused to duly prove his defence by cross examining the complainant, the said application is allowed as prayed for. Now to come up on 10.09.2018 for cross examination of complainant.”

A perusal of the above order would show that the case was fixed for 10.09.2018 for cross-examination of the complainant.

iv) **10.09.2018** (Page 14)- On the said date, the trial Court had passed the following order:-

*“Present: Complainant with counsel Sh.Surender Kumar Mangla.
Accused on bail with counsel Sh. Raj Kumar Gautam.*

Today the case was fixed for cross examination of the complainant. Cross examination could not be done. On request, case is adjourned to 12.11.2018 for the above said purpose.”

A perusal of the above would show that the case was adjourned to 12.11.2018.

v) **12.11.2018** (Page 15)- The trial Court had passed the following order:-

“Present: Complainant with counsel Sh.M.S.Chandela.

Accused Bhagat Singh not present represented with counsel Sh.M.S.Bhadana.

Today the case was fixed for Dws. No DW is present. However, an application for exemption from personal appearance of accused moved through counsel. Heard. In view of the facts mentioned in the application personal appearance of accused is exempted for today only. Now, case is adjourned to 21.11.2018 for cross examination of DW-1 (Bhagat Singh) as well as for remaining DWs.”

A perusal of the above order would show that although the complainant was present but an application was moved for exemption of personal appearance by the petitioner and thus, the case was adjourned to 21.11.2018.

vi) **21.11.2018**- The order dated 21.11.2018 and the subsequent orders upto 09.01.2019 have not been annexed along with the present petition.

v) **09.01.2019** (Page 16)- The trial Court was pleased to

pass the following order:-

*“Present: Complainant with counsel Sh.Surender Kumar Mangla.
Accused on bail represented by counsel Sh. Raj Kumar Gautam.*

Today the case was fixed for cross examination of the complainant. Cross examination could not be done as an adjournment sought by learned defence counsel. Heard. Now to come upon 15.02.2019 for cross-examination of the complainant, subject to payment of costs of Rs.1,000/- to be paid to the complainant by the accused.”

A perusal of the above order would show that another adjournment was sought by the defence counsel without any explanation as to why the same was sought although, the complainant was present along with his counsel on the said date. The same was granted subject to payment of Rs.1000/- to be paid to the complainant.

vi) **15.02.2019** (Page 18)- The trial Court was pleased to pass the following order:-

*“Present: Complainant with counsel Sh. Surender Kumar Mangla.
Accused on bail represented by counsel Sh. Raj Kumar Gautam.*

Today the case was fixed for cross examination of the complainant. However, again adjournment sought on behalf of accused. Perusal of case file shows that in the present case, the application under section 145(2) of NI Act was moved for cross examination of the complainant on 17.07.2018 and same was allowed on the same day and thereafter, case was adjourned to 10.09.2018, 12.11.2018, 09.01.2019 and for today i.e. 15.02.2019 subject to payment of cost of Rs. 1,000/-. Today against cross-examination of the complainant has not been done on behalf of accused. Cost also not paid. It appears that accused has no interested for pursuing to cross-examination of the complainant. Hence, opportunity to the accused to cross examination of complainant is hereby

declined. Now to come upon 19 04 2019 for DWS.”

A perusal of the above order would show that although the complainant was present along with counsel but yet another adjournment was sought on behalf of the petitioner / accused for cross-examination of the complainant. It was observed that even the costs of Rs.1000/- was not paid. The trial Court was thus, left with no other alternative, and had rightly declined to grant any further opportunity to the accused/ petitioner to cross-examine the complainant.

vii) Although, the zimni orders from 15.02.2019 till 09.09.2022 have not been annexed along with the present petition but a perusal of the order dated 09.09.2022 (page 20 of the paper book) would show that last opportunity was granted to the petitioner vide order dated 01.09.2022 for his cross-examination and yet, the petitioner did not get himself cross-examined and the trial Court, however, granted one more opportunity to the petitioner-accused to get himself cross-examined. A perusal of the order dated 09.09.2022 would show that an application under Section 311 Cr.P.C. to recall the complainant for cross-examination was also filed which was dismissed on the ground that there was no provision in criminal law for a court to review its own order. No argument has been raised nor any judgment has been cited to show that order dated 09.09.2022 is illegal or against law.

viii) **17.09.2022** (Page-21)- The revision petition filed by the petitioner against the order dated 15.02.2019 was dismissed on

the following two counts:-

a) The first count was on merits qua which the Court had observed that in spite of repeated adjournments granted to the petitioner -accused, he has not cross-examined the complainant and that the petitioner was only trying the delay the disposal of criminal complaint which was instituted on 14.02.2018.

b) The second count on which the said revision petition was dismissed was on account of the fact that in the application for condonation of delay even the period of delay had not been mentioned and the delay of 3 years and 7 months in filing the revision petition was taken to be an inordinate delay in filing the revision petition and thus, the same was not condoned and the revision petition was dismissed both being time barred as well as on merits.

That the above said facts clearly demonstrate that the petitioner has made every possible attempt to delay the proceedings instituted under Section 138 N.I. Act against the petitioner. Although, the complainant was present on all dates, as is reflected from the zimni orders which have been annexed with the present petition as Annexure P-2, yet, the petitioner or his counsel chose not to cross-examine the complainant. Even the costs imposed amounting to Rs.1000/- on 09.01.2019 was not paid by the petitioner. The order declining further opportunity to cross-examine the complainant was passed on 15.02.2019 and the said order was challenged after a period of more than 3 years and has been rightly dismissed by the

learned Sessions Judge, Faridabad vide order dated 17.09.2022 both on merits as well as being time barred. No illegality and perversity has been found in the impugned orders.

Keeping in view the above said facts and circumstances, the present petition being sans merit and is accordingly, dismissed.

(VIKAS BAHL)
JUDGE

October 11, 2022
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No