

CRM-M-27939-2022

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

**CRM-M-27939-2022
Date of Decision: 28.07.2023**

Gopal Mehta

..... Petitioner

Versus

M/s Pentagun Fabrics and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Rajesh Bansal, Advocate,
for the petitioner.

None for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

1. This is a petition filed under Section 482 of the Code of Criminal Procedure praying for quashing of the impugned order dated 01.06.2022 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Sonapat, in Criminal Complaint No.4539/2013 dated 12.03.2012 titled as 'M/s Pentagun Fabrics Vs. Varacious Folks Overseas Ltd. and others' whereby the right of the petitioner for cross-examination of the complainant has been closed by court order.

2. It is submitted by the learned counsel for the petitioner that the petitioner is an accused in the aforesaid criminal complaint filed under Section 138 of the Negotiable of Instruments Act and which is pending since the year 2013. The time consumed in pendency of the criminal complaint is not attributable to the present petitioner. On the contrary, in the first instance, the said criminal complaint was dismissed in default due to non-

appearance of the complainant. However, the same was got restored, though in the year 2022 only. Thereafter, during the pendency of the complaint, both the parties had agreed to settle their dispute through mediation and the matter was referred to the Mediation Centre on 06.04.2022. However, matter could not be settled between the parties in the mediation proceedings. On 12.05.2022, the case was adjourned to 01.06.2022 on the request of the complainant for his cross-examination subject to payment of costs of Rs.1,000/-. On 01.06.2022, the petitioner/accused could not cross-examine the complainant and he sought an adjournment to cross-examine the complainant. However, the Court below has passed an order of treating the cross-examination on behalf of the petitioner as nil. Accordingly, it is submitted by the learned counsel for the petitioner that since the petitioner is an accused in the aforesaid criminal case, therefore, his defence would be seriously prejudiced, if the petitioner is not granted an opportunity to cross-examine the witness(s) produced by the complainant. Hence; the petitioner deserves to be granted at least one opportunity to cross-examine the witness(s) produced by the complainant.

3. Today, no one has put in appearance on behalf of contesting respondent No.1, despite service.

4. Having heard learned counsel for the petitioner and having perused the case file, this Court finds that the complainant has dragged the aforesaid criminal case for a long time. Not only that, after restoration of the complaint, the complainant had not concluded his evidence till 12.05.2022.

On request of the complainant, case was adjourned to 01.06.2022. On that

date, the petitioner was to cross-examine the complainant. But on that date, the petitioner had made a request for adjournment for cross-examining the complainant. Whatever be the reason, counsel for the petitioner could not cross-examine the complainant on the said date. However, it would be the travesty of justice, if the petitioner is made to suffer punishment for the criminal charge only for a single default. Therefore, it would not be unjustified to grant one opportunity to the petitioner to cross-examine the witness(s) of the complainant, however, by putting him under an appropriate financial burden; so as to make him realize his mistake in wasting time of the Court.

5. Accordingly, the present petition is allowed and the order impugned in the present petition is set aside. The Trial Court is directed to grant one effective opportunity to the petitioner to cross-examine the complainant and his witness(s), however, subject to payment of Rs.20,000/- as costs; to be deposited by the petitioner with the Poor Patients Welfare Fund, PGIMER, Chandigarh, within a period of three weeks from today.

6. However, it is clarified that the trial Court shall grant the aforesaid opportunity to the petitioner only on production of the receipt of the costs having been deposited by the petitioner, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

28.07.2023
adhikari

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