

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

CRM-M-52235-2023
Reserved on: 07.12.2023
Pronounced on: 14.12.2023

M/s Della Technica and another

. . . . Petitioners

Vs.

M/s Jai Jagdamba Enterprises

. . . . Respondent

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. H.S. Dhindsa, Advocate, for the petitioners.

Mr. Neeraj Jain, Advocate, for the respondent.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.PC, petitioners pray for quashing of order dated 08.09.2023 (Annexure P4) passed by the Court of Ld. JMIC, Ludhiana, whereby an application under Section 311 CrPC of the petitioners-accused has been partly allowed only during the proceedings of a complaint bearing CIS No. COMA-883/2018 tilted 'M/s Jai Jagdamba Enterprises Vs. M/s Della Technica and another', under Section 138 of the Negotiable Instruments Act, 1881 [for short 'the NI Act'].

2. As per the complaint (Annexure P1) filed by the respondent, the accused i.e., the petitioners had purchased a wood working machine during the period of 01.04.2008 to 31.03.2009 from the complainant-firm i.e., respondent against which various bills were raised during 08.04.2008 to 12.05.2008, detailed in para-No.2 of the complaint. The cost of the machine was ₹36,35,840/-, out of which ₹15 lakhs were paid by the accused through cheques. Balance amount of ₹21,24,000/- was outstanding. Accused was

creating false disputes regarding the payment. The dispute was sorted out and accused issued Cheque No.664840 dated 08.01.2010 for an amount of ₹22,50,000/- (which includes interest component) drawn on HDFC Bank. On assurance of the accused, the cheque was presented, but the same was returned vide bank memo dated 20.01.2010 with remark 'payment stopped by the drawer'. Complainant issued a legal notice dated 29.01.2010 to pay the amount within 15 days from the date of receipt of the notice, but the same was returned as unclaimed. Neither any response to the legal notice was sent nor the payment was made, forcing the complainant-respondent to file the complaint on 18.01.2018 to prosecute the accused-petitioners.

3. Trial proceeded. Case reached at the stage of defence evidence, when accused moved an application (Annexure P2) under Section 311 Cr.PC for recalling the complainant for his further cross-examination; and further to re-examine DW Amarjit Kaur to prove certain documents. It was pleaded that complainant could not be confronted with certain amounts as deposited by the accused in his HDFC bank account. Certain entries from 02.04.2008 to 31.10.2008, as mentioned in para-No.2 of the application, were required to be confirmed. Besides, the petitioners-accused had examined one defence witness namely Amarjit Kaur to prove VAT 20 return for the year 2008-2009, but at that time original VAT 20 return was not available and so, not produced in the Court. Now the original VAT 20 return and the tax assessment order of the Excise and Taxation Officer, Ludhiana had become available in original, which the accused-petitioners wanted to prove by recalling DW Amarjit Kaur.

4. Respondent-complainant opposed the application by filing reply Annexure P3 and pointing out that earlier, Hon'ble High Court had granted one opportunity vide its order dated 17.02.2022 to conclude the cross-

examination of the complainant and so, the present application was nothing but an attempt to delay the proceedings.

5. After hearing both the sides, Id. Magistrate partly allowed the application vide detailed order dated 08.09.2023 (Annexure P4), by granting permission to re-examine DW Amarjit Kaur, Clerk to the Excise and Taxation Department, Ludhiana so as to prove VAT 20 return for the period 01.04.2008 to 31.03.2009, but the request to recall CW1-complainant was declined. Against the said order dated 08.09.2023, this petition is filed.

6. It is contended that ends of justice would be served by providing sufficient opportunity to the parties during trial; that intention of the petitioners is not to waste the valuable time of the Court rather, for a fair trial and so, the impugned order deserves to be set aside. Needless to say that respondent-complainant opposed the petition.

7. After hearing Id. counsel for both the sides, this Court finds the present petition to be an attempt to delay the matter. Earlier, vide an order dated 17.02.2022 passed in CRM-M-3405-2022 titled as *M/s Jai Jagdamba Enterprises Vs. M/s Della Technica and another*, this Court directed the concerned JMIC to conclude the cross-examination of CW-1 Sunir (Sunil) Mittal i.e., the complainant on the next date of hearing i.e., 08.03.2022 or within the next one week from that date. The accused of the case i.e., present petitioners, failed to do so and sought extension of time to conclude the cross-examination of CW1. Accepting the said request, this Court vide order dated 15.03.2022 passed in CRM-9352-2022 in CRM-M-3405-2022, granted one more week to conclude the further cross-examination of CW1 from that day

i.e., 15.03.2022. As per the direction of this Court, cross-examination of CW1-complainant was concluded.

8. The present application under Section 311 CrPC appears to be not only an attempt to delay the proceedings, but also a tactic to overcome the order dated 17.02.2022 to be read with order dated 15.03.2022 passed by this Court in CRM-M-3405-2022, whereby cross-examination of CW1 was directed to be concluded within a specified time.

9. Apart from the above, accused-petitioner wants to confront the complainant with certain entries in the bank account from 02.04.2008 to 31.10.2008. These entries could have been very well proved by a simple production of the bank statement of account before the Court at the relevant time. There is no justification for recalling CW1 so as to prove those entries, by moving an application after such a long time. The trial Court, in its impugned order, has given details as to how, for one or the other reason, accused had made repeated requests for adjournments. It has also been noticed that petitioner is making an attempt to overcome the earlier order passed by this Court, whereby specified time was given to him to conclude the cross-examination of CW1.

10. Having regard to all the aforesaid circumstances, this Court finds no merit in the present petition and as such, the same is hereby dismissed.

(DEEPAK GUPTA)
JUDGE

14.12.2023

Vivek

1. Whether speaking/reasoned?

Yes

2. Whether reportable?

No