

CRM-M-57111 of 2022

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

CRM-M-57111 of 2022
Reserved on: 06.01.2023
Date of Pronouncement: - 17.01.2023

Hex Nuts Pvt. Ltd. and another

.....Petitioners

Versus

M/s Jatindera Udyog

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Sahil Khunger, Advocate,
for the petitioner.

Mr. Sahil Thakur, Advocate,
for Mr. Manuj Nagrath, Advocate, for the respondent.

NAMIT KUMAR, J.

The challenge in the present petition under Section 482 Cr.P.C. is to order dated 11.10.2022 (Annexure P-34) passed by the Court of learned Judicial Magistrate Ist Class, Ludhiana, in COMA No.45263/2013 dated 04.09.2012 titled as “M/s Jatindra Udyog v. Hex Nuts Pvt. Ltd. and another” under Section 138 of the Negotiable Instruments Act, whereby cross-examination of CW1-Jatinder Mittal has been treated as ‘Nil’.

CRM-M-57111 of 2022

Brief facts of the present case are that respondent-complainant filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'the NI Act') against the petitioners alleging therein that petitioners used to get done job work of heat treatment of nut bolt stud and washer from the respondent from time to time on credit basis against different bills. The petitioners in order to discharge their pre-existing legally enforceable liability in part towards the respondent, issued two cheques bearing No.989237 dated 24.07.2012 and cheque bearing No.989238 dated 24.07.2012 for Rs.2,50,000/-each drawn on State Bank of India, SCB, Civil Lines, Ludhiana, in favour of the respondent. However, on presentment of the said cheques by the respondent through his bankers, "Not Arranged For" vide bank memos dated 25.07.2012. Upon this, the respondent got issued the statutory legal notice on 14.08.2012 through his counsel calling upon the petitioners to make good the amount covered under the cheques in question but despite this, the petitioners did not pay the said amount within 15 days from the date of receipt of the notice. Hence, the respondent filed the complaint under Section 138 of the NI Act. The trial Court acquitted the petitioners vide judgment dated 30.10.2015. Against the said judgment, respondent approached this Court by way of CRM-A-2071-MA of 2015 seeking leave to appeal under Section 378(4) Cr.P.C. The appeal preferred by the respondent was allowed vide order dated 21.01.2019 and the judgment of the trial Court dated 30.10.2015 was set aside by this Court and the trial Court was directed to allow the respondent to lead its complete evidence and decide the

CRM-M-57111 of 2022

matter afresh. After service of notice, petitioners appeared before the trial Court on 04.06.2022 and were admitted to bail. Thereafter, despite availing numerous opportunities petitioners failed to cross-examine CW1 Jatinder Mittal, therefore, cross-examination of this witness has been treated as 'Nil' by the trial Court vide impugned order dated 11.10.2022. Hence this petition.

Learned counsel for the petitioners submitted that the petitioners are willing to cross-examine complainant CW1 Jatinder Mittal and the impugned order passed by the trial Court is totally wrong and erroneous and petitioners may be granted two more effective opportunities to cross-examine CW1 Jatinder Mittal.

Per contra, learned counsel appearing for the respondent-complainant submitted that numerous opportunities were granted to the petitioners to cross-examine CW1-Jatinder Mittal, however, they have not availed the said opportunities and thus, the impugned order passed by the trial Court is perfectly justified and is liable to be upheld.

I have heard learned counsel for the parties and perused the record.

Before proceeding further in the matter, it would be useful to reproduce the interim orders passed by the trial Court dated 29.07.2022, 20.08.2022, 08.09.2022, 12.09.2022, 19.09.2022, 01.10.2022, 04.10.2022 and 11.10.2022, which read as under: -

*“Present: Sh. Vikas Gupta Adv, for complainant.
Accused Rajinder Kumar and Lajwanti on
bail with counsel.*

*Today an application has been moved by the Ld.
counsel for accused for adjourn the case on the ground*

CRM-M-57111 of 2022

that applicant-accused wants to file SLP before Hon'ble Supreme Court of India against the orders of Hon'ble Punjab and Haryana High Court. Reply to the application not filed by the opposite party. However, Ld. Counsel for complainant orally contested the same and submitted that present application has been filed just to delay the proceedings of the case and same may kindly be dismissed. Record perused. Instant application has been filed by Ld. Counsel for the applicant-accused to adjourn the case as he wants to file SLP before Hon'ble Supreme Court of India. This court is of the view that there is no such provision or law to adjourn the proceedings of the case on the ground that applicant-accused is going to file SLP, unless or until any higher authority particularly passed any such order in the matter. Moreover, applicant-accused has not mentioned in his application about any stay order from any higher authority. The present application is filed just to delay the proceedings of the case. Therefore, the present application is hereby dismissed. Cw1 Jatinder Mittal is present and examined in chief. His cross is deferred. Now the case is adjourned for 20.08.2022 for cross examination of Cw1.

*Shimpa Rani, PCS,
JMIC/LDH/29.07.2022.*

*Present: Sh. Vikas Gupta Advocate for the complainant.
Counsel for the accused Rajinder Kumar and Lajwanti.*

An exemption application on behalf of the accused Rajinder Kumar and Lajwanti has been moved by the Counsel for the accused. In view of averments made in the application, same is allowed and the personal appearance of accused Rajinder Kumar and Lajwanti is exempted for today only with the direction to produce the accused in

CRM-M-57111 of 2022

person on the next date of hearing. On request, case is adjourned to 08.09.2022 for cross examination of CW1.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana.
20.08.2022*

*Present: Sh. Vikas Gupta, Advocate for the complainant. Counsel for the accused Lajwant.
Accused Rajinder Kumar along-with Proxy Counsel.*

An exemption application on behalf of the accused Lajwant has been moved by the Counsel for the accused. In view of averments made in the application, same is allowed and the personal appearance of accused is exempted for today only with the direction to produce the accused Lajwant in person on the next date of hearing. Today the case was fixed for cross examination of CW1. Perusal of the case file reveals that case is more than 8 years old case and falls under the category of Action plan case. Further as per instructions of Hon'ble High Court, these cases are to be dealt with on priority basis. Perusal of the file further reveals that defence counsel has been given numerous effective opportunities to cross examine the witness, but he has not cross-examined the complainant witness. Today, again CW come present since morning but proxy Counsel on behalf of accused appeared and requested that defence Counsel is not feeling well today and he seek an adjournment. In the interest of justice, Request heard and allowed. Now, case is adjourned to 12.09.2022 for cross examination of CW1, subject to last and final opportunity.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana
08.09.2022*

CRM-M-57111 of 2022

*Present: Sh. Vikas Gupta, Advocate for the complainant.
Accused Rajinder Kumar and Lajwanti along-with Counsel.*

Today the case was fixed for cross examination of CW1. No CW is present. As Advocates of District Bar Association, Ludhiana are abstaining from work today due to strike, therefore, case is adjourned to 19.09.2022 for cross examination of CW1, subject to last and final opportunity.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana.*

Date of order: 12.09.2022

*Present: Sh. IQBAL SINGH Advocate for the complainant.
Accused along with Counsel Sh. Bhawandeep Kaura, Advocate.*

Sh. Bhawandeep Kaura, Advocate has filed power of attorney on behalf of accused. No CW is present. On request of defence counsel, case is adjourned to 01.10.2022 for cross examination of CW1, subject to last and opportunity.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana*

Date of order: 19.09.2022

*Present: Sh. IQBAL SINGH Advocate for the complainant.
Proxy Counsel for the accused Rajinder.
Accused Lajwanti on bail.*

An exemption application on behalf of the accused Rajinder has been moved by the Proxy Counsel for the accused. In view of averments made in the application, same is allowed and the personal appearance of accused is exempted for today only with the direction to produce the accused in person on the next date of hearing. Today the case was fixed for cross examination of CW1. Perusal

CRM-M-57111 of 2022

of the case file reveals that case is more than 8 years old case and falls under the category of Action plan case. Further as per instructions of Hon'ble High Court, these cases are to be dealt with on priority basis. Perusal of the file further reveals that defence counsel has been given numerous effective opportunities to cross examine the witness, but he has not cross-examined the complainant witness. Today, again CW come present since morning but proxy Counsel on behalf of accused appeared and requested that defence Counsel is not feeling well today and he seek an adjournment. Perusal of the file reveals that on 08.09.2022, the proxy Counsel for the accused seek adjournment on the same ground and after that on 19.09.2022, fresh power of attorney was filed on behalf of accused by Advocate Sh. Bhawandeep kaura. Today, again an application for adjournment is filed by proxy Counsel for accused on the same ground that the Counsel is suffering from high fever. he seek an adjournment. In the interest of justice, one last and final opportunity is granted to accused for cross examination of CW1, subject to cost of Rs.500/- to be deposited in DLSA, failing which the cross examination will be treated as Nil. On request, case is adjourned to 04.10.2022 for cross examination of CW1, subject to last and final opportunity. On joint request, Parties are directed to appear for cross examination at 02:00pm sharp.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana.*

Date of order: 01.10.2022

*Present: Sh. IQBAL SINGH Advocate for the
complainant.
Counsel for the accused Rajinder and
Lajwanti.*

CRM-M-57111 of 2022

An exemption application on behalf of the accused Rajinder and Lajwanti has been moved by the Counsel for the accused. In view of averments made in the application, same is allowed and the personal appearance of accused is exempted for today only with the direction to produce the accused in person on the next date of hearing. CW come present but due to the sad demise of senior Advocate Sh. Hari Mittar Sharma, the lawyers of District Bar Association, Ludhiana are abstaining from work today. Perusal of the case file reveals that case is more than 10 years old case and falls under the category of Action plan case. Further as per instructions of Hon'ble High Court, these cases are to be dealt with on priority basis. Perusal of the file further reveals that defence counsel has been given numerous effective opportunities to cross examine the witness, but he has not cross-examined the complainant witness. Defence Counsel is directed to cross examine the CW1 on 11.10.2022, subject to previous cost of Rs.500/- to be deposited in DLSA, failing which the cross examination will be treated as Nil. No further opportunity will be granted at any cost. Parties are directed to appear for cross examination at 11:00 am sharp.

*Shimpa Rani, PCS
Judicial Magistrate 1st
class Ludhiana.*

Date of order: 04.10.2022

*Present: Sh. Vikas Gupta, Adv, for complainant.
Accused on bail with counsel.*

Today an application has been moved by the Ld. counsel for accused for putting up/fixed the date of complaint after the date fixed by Hon'ble Supreme Court of India i.e. 11.11.2022. It is averred in the application that the applicant has filed SLP no.25921/2022 before

CRM-M-57111 of 2022

Hon'ble Supreme Court against the orders of Hon'ble Supreme Court of India after taking cognizance and after minutely observing the facts of the case and impugned orders, the Hon'ble Apex Court condoned the delay and admitted the SLP and ordered for the issuance of notice to the complainant. Ld. Counsel for complainant orally contested the same and submitted that present application has been filed just to delay the proceedings of the case and same may kindly be dismissed.

Record perused. The present application has been filed by Ld. counsel for the applicant-accused to fix the date after the date of Hon'ble Supreme Court. This court is of the view that there is no such provision or law to adjourn the proceedings of the case on the ground that applicant-accused has filed SLP before Hon'ble Supreme Court, unless or until any higher authority particularly passed any such order in the matter. Moreover, applicant-accused has not mentioned in his application about any stay order from any higher authority. The present application is filed just to delay the proceedings of the case. Therefore, the present application is hereby dismissed.

*Shimpa Rani, PCS,
JMIC/LDH/11.10.2022.*

*Present: Sh. Vikas Gupta Adv, for complainant.
Accused on bail with counsel.*

Today the case was fixed for cross examination of Cw1. Cw1 is present in the court for cross examination since morning. Perusal of the file reveals that present case is more than 10 year old case and falls under the category of action plan cases and the Hon'ble High Court has already given directions to decide these cases on priority basis. Perusal of the file further reveals that the defence

CRM-M-57111 of 2022

counsel has taken numerous effective opportunities for conducting the cross examination of Cw1. On 08.09.2022 the accused was granted last and final opportunity to cross examine Cw1. But on next date of hearing accused has engaged new counsel Sh. Bhawandeep Kaura and he took adjournment to go through the file. On his request, the case was adjourned to 01.10.2022 for cross examination of Cw1, subject to last and final opportunity. On 01.10.2022 proxy counsel for accused moved application for adjournment on the ground that senior counsel is suffering from fever. In view of the request, case was adjourned to 11.10.2022 for cross examination, subject to last and final opportunity, even cost of Rs. 500/ also imposed upon the accused.

Today again the accused has engaged his earlier counsel Sh. Pardeep Kapoor Adv., and he filed fresh power of attorney. It shows that the accused is trying to delay the matter on one or other excuses. On last date of hearing it was made clear that if the accused failed to cross examine Cw1 on next date, the cross examination of complainant will be treated as Nil. As such, the defence counsel was asked to cross examine Cw1 but he moved application to adjourn the case after the date fixed in Hon'ble Supreme Court and vide my separate detailed order the said application is dismissed.

The Ld. Defence Counsel was again asked to cross examine Cw1, failing which his cross examination will be treated as Nil, but Ld. Defence counsel seek adjournment without any reasonable cause. As per provision of Section 309 (2) CrPC when the witness is present, no adjournment or postponment shall be granted without examining the witness, except any special reason to be recorded in writing. The defence counsel has not stated any special reason for not examining the present witness in this case.

CRM-M-57111 of 2022

Keeping in view all the circumstances, this court is of the view that the witness is appearing on each and every date, but Ld. Defence counsel did not cross examine the present witness on one pretext or the other. hence witness cannot be allowed to become victim time and again and this court cannot sit as mere spectator to harassment caused to witness by the opposite counsel by not conducting the cross examination. Finding no justification to adjourn the case further for same purpose, as such the cross examination of the present witness is treated as Nil. Now the case is adjourned for 28.10.2022 for Cws.

*Shimpa Rani, PCS,
JMJC/LDH/11.10.2022.”*

Perusal of the above orders would show that CW1 Jatinder Mittal was examined in chief on 29.07.2022 and his cross-examination was deferred for 20.08.2022. On 20.08.2022, an application for exemption on behalf of the accused persons, namely, Rajinder Kumar and Lajwanti was filed and the same was allowed and the case was adjourned for 08.09.2022 for cross-examination of CW1. On 08.09.2022 also an exemption application on behalf of accused-Lajwanti was filed which was allowed and it was observed by the Court that the case falls under action plan cases being eight years old and was fixed for cross-examination of CW1 and the said witness was present, however, he was not cross-examined and the case was adjourned to 12.09.2022 as last and final opportunity. On 12.09.2022 the case was adjourned for 19.09.2022 for the same purpose as last and final opportunity. On 19.09.2022 new counsel appeared on behalf of the

CRM-M-57111 of 2022

examination of CW1, subject to last opportunity. On 01.10.2022 again exemption application was moved on behalf of the petitioners and CW1 was not cross-examined and the case was adjourned for 04.10.2022 subject to costs of Rs.500/- to be deposited with the DLSA, with direction that on failing to do so the cross-examination will be treated as 'nil'. On 04.10.2022 again exemption application was moved on behalf of the petitioners and CW1 was present but lawyers of District Bar Association, Ludhiana, had abstained from work due to demise of Senior Advocate Sh. Hari Mittar Sharma and the case was adjourned for 11.10.2022 for cross-examination at 11:00 a.m. sharp and it was observed that no further opportunity will be granted. On 11.10.2022 an application was moved by the counsel for the accused for adjourning the matter after the date fixed by the Hon'ble Supreme Court i.e. 11.11.2022. While dismissing the said application, it was observed by the Court that the application has been filed to delay the proceedings and vide separate order of even date i.e. 11.10.2022, cross-examination of CW1 Jatinder Mittal was treated as 'Nil', which is impugned in this petition.

From the above, it is crystal clear that ample opportunities were granted to the petitioners to cross-examine CW1-Jatinder Mittal, however, petitioners have chosen not to cross-examine the witness and tried to halt the proceedings before the trial Court. This has also been observed by the trial Court time and again, the trial proceedings have been delayed by the petitioners-accused. Thus, the impugned order

CRM-M-57111 of 2022

dated 11.10.2022 passed by the trial Court does not call for any
interference by this Court under Section 482 Cr.P.C.

Dismissed.

17.01.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No