

2024:PHHC:154846



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

128+266

**CRM M-57064 of 2022 (O&M)
Date of Decision: 25.11.2024**

M/s Hind Fasteners and others ...Petitioners
Versus
M/s Jatinder Udyog ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sahil Khunger, Advocate
for the petitioners.

Mr. Sahil Thakur, Advocate, for the respondent.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the impugned order dated 11.10.2022 (Annexure P-34) passed by the Judicial Magistrate 1st Class, Ludhiana, in case bearing COMA No. 45262/2013 dated 04.09.2012 titled as “**M/s Jatindra Udyog Vs. M/s Hind Fasteners and others**”, whereby, the cross-examination of CW1 Jatinder Mittal has been treated as ‘NIL’.

2. Learned counsel for the petitioner contends that the respondent had filed a criminal complaint under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the Act**') against the petitioners on 04.09.2012. After the preliminary evidence, the petitioners were summoned to face trial under Section

138 of the Act. Subsequently, a notice of accusation was served on the petitioners, to which, the petitioners pleaded not guilty and claimed trial. Thereafter, the statement under Section 313 Cr.P.C., was recorded and the petitioners had taken a stand that nothing was purchased from the respondent. Vide the judgment dated 31.10.2015 (Annexure P-2), the petitioners were acquitted by the trial Court. Feeling aggrieved, the respondent/complainant preferred criminal appeal bearing No. CRM-A-2083-MA of 2015, challenging the judgment dated 30.10.2015 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Ludhiana. Vide order dated 21.01.2019 (Annexure P-3), this Court had set aside the judgment dated 30.10.2015 (Annexure P-2) and made the following observations:-

"Having given considerable thought to the submissions of learned counsel for the applicant, this Court finds merit acceptance of this application for the reasons to follow:

The evidence of other case led amongst the parties in this case could not have been read in some other case filed by the applicant.

Admittedly, the impugned complaint was filed by the applicant against M/s Hind Fasteners through its proprietors -Sh. Jatinder Mittal, but the Trial Court considering the cross- examination of applicant in other complaint filed against M/s Hex Nuts Pvt. Ltd., has wrongly dismissed the complaint of the applicant.

Considering the above factual aspect of the case, the instant Criminal Miscellaneous Application, is accepted

and impugned judgment of the trial Court dated 30.10.2015, dismissing the Complaint of applicant is set aside. Trial Court is directed to allow the applicant to lead its complete evidence and decided the matter afresh. The parties are directed to appear before the Trial Court on or before 01.02.2019".

3. After passing the order dated 21.01.2019 passed by this Court, the petitioners were never informed that the judgment dated 30.10.2015 (Annexure P-2) had been set aside by this Court. However, the matter remained pending before the Court of Judicial Magistrate 1st Class, Ludhiana. Even, the order dated 21.01.2019 (Annexure P-3) was passed by this Court without issuing notice to the petitioners. Thereafter, the matter remained pending before the trial Court due to Covid 19 Pandemic. When the petitioners came to know about the order passed by this Court, the petitioners appeared before the trial Court on 04.06.2022 and were admitted to bail by the trial Court and the case was adjourned to 16.07.2022. On 16.07.2022, no CW was present and the case was adjourned to 29.07.2022. On 29.07.2022, the petitioners filed an application before the trial Court for adjourning the case as the petitioner wanted to file an SLP before the Hon'ble Supreme court against the order dated 21.01.2019 (Annexure P-3) passed by this Court. However, the trial Court dismissed the application and proceeded with recording of examination-in-chief of CW1 Jatinder Mittal on 29.07.2022. On 20.08.2022, 08.09.2022, 12.09.2022 and 19.09.2022, no CW was

present and the case was adjourned to 01.10.2022. Again due to change of defence counsel, an adjournment was sought by the petitioners but the trial Court observed that the case was more than 08 years old and falls in the category of action plan cases and the trial Court granted the last and final opportunity subject to payment of Rs. 500/- as costs and the case was adjourned to 04.10.2022. On 04.10.2022, due to the death of a senior lawyer, the lawyers abstained from work and CW1 was not cross-examined and the case was adjourned to 11.10.2022. On 11.10.2022, the petitioners filed an application before the Court of Judicial Magistrate 1st Class, Ludhiana to adjourn the case beyond the date fixed by the Hon'ble Supreme Court of India. However, vide order dated 11.10.2022, the trial Court dismissed the application. On 11.10.2022, the Judicial Magistrate 1st Class, Ludhiana, treated the cross-examination of CW1 Jatinder Mittal as 'NIL' as sufficient opportunities were already granted to the petitioners. Copy of the present impugned order dated 11.10.2022 has been annexed as annexure P-34. Even thereafter, the case was adjourned to 09.11.2022, when the complainant closed his evidence and the case was adjourned to 16.11.2022 for recording of the statements of the accused under Sections 313 Cr.P.C.

4. Learned counsel appearing on behalf of the petitioners submitted that on 04.10.2022, petitioners were willing to cross examine CWI Jatinder Mittal, but due to the aforesaid circumstances, he could not be examined and the petitioners may be granted one

opportunity to cross-examine CWI Jatinder Mittal before the trial Court.

5. On the other hand, learned counsel for the respondent vehemently argued that the petitioners intentionally did not cross-examine CW1 on several dates and even last opportunity subject to cost was granted to the petitioners. Still, the petitioners chose not to cross-examine CW1. Learned counsel further submitted that claiming similar relief, CRM M-57111 of 2022 was filed before this Court and the same has also been dismissed and the facts of the case are squarely covered by the ratio of the said order.

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

7. In the present case, the petitioners have prayed for grant of an effective opportunity to cross-examine CW1 Jatinder Mittal, who had appeared before the trial Court on 29.07.2022 and the prayer was declined vide order dated 11.10.2022 (Annexure P-34) passed by the trial Court illegally. Before proceeding further, it would be appropriate to reproduce the orders 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 passed by the trial Court, which read as under:-

“Present:- Sh. Vikas Gupta, Advocate, for the complainant
Accused Rajinder Kumar and Lajwanti on bail with counsel.

Today an application has been moved by the Ld. counsel for accused for adjourning the case on the ground 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 person on the next date of hearing. On request, case is adjourned to 08.09.2022 for cross examination of CW1.

*Shimpa Rani, PCS,
JMIC/LDH/20.08.2022”.*

*Present:- Sh. Vikas Gupta, Advocate, for the complainant
Counsel for the accused Lajwanti.
Accused Rajinder Kumar alongwith 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 Lajwanti 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 seeks 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”.*

*Present:- Sh. Vikas Gupta, Advocate, for the complainant.
Accused Rajinder Kumar and Lajwanti alongwith 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/12.09.2022”*

*Present:- Sh. Iqbal Singh, Advocate, for the complainant.
Accused alongwith 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/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. An application for adjournment also moved by proxy counsel for accused on the ground that main counsel of accused is not well and suffering from fever. In view of the contents of application, the present application is allowed. On request, case is adjourned to 04.10.2022 for cross examination of CW1, subject to last and opportunity. Parties are directed to appear for cross examination at 02:00 pm sharp.

*Shimpa Rani, PCS
Judicial Magistrate 1st Class
Ludhiana/01.10.2022”*

*Present:- Sh. Iqbal Singh, Advocate, for the complainant.
Counsel for the accused Rajinder and Lajwanti.*

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/04.10.2022”*

*Present:- Sh. Vikas Gupta, Advocate, for the complainant.
Counsel for accused Lajwanti.
Accused Rajinder Kumar 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 bearing No. 25921/2022 before 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, Advocate, for the complainant.

Counsel for accused Lajwanti.

Accused Rajinder Kumar on bail with counsel.

Personal appearance of accused Lawjanti is exempted for today only, on the grounds mentioned in the application. Today the case was fixed for cross examination of CW1. CWI is present in the court for cross examination since morning. Perusal of the file reveals that present case is more than 10 years 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 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, falling which his cross examination will

be treated as Nil, but Ld. Defence counsel seek adjournment without any reasonable cause. As per provision of Section 300 (2) CrPC when the witness is present, no adjournment or postponement 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. 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”.*

8. From the perusal of the aforesaid orders, it is apparent that the case was repeatedly adjourned by the trial Court so that, CWI Jatinder Mittal may be examined by the petitioners. However, even after granting several opportunities for a period of more than 01 year and 03 months, the petitioners chose not to cross-examine him. Thus, there is no merit in the instant petition and the petition is ordered to be dismissed.

9. The trial Court is directed to decide the trial expeditiously.
10. CRM 31127 of 2024 stands disposed off accordingly.

25.11.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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