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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 2304/2021, CRL.M.As.15305 & 17597/2021

MS ADS HITECH POLYMERS PVT LTD & ORS..... Petitioners

Through: Mr. Deepak Acharya, Advocate for
petitioners No.1 and 2.

Mr.Archit Upadhayay and Ms.Ramya
Tiwari, Advocates for petitioner No.3.

versus

M S VARAHI LIMITED

..... Respondent

Through: Mr. Sanjay Gupta and Mr.
Shubhangam Thakur, Advocates

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

% **23.02.2024**

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.') has been preferred on behalf of the petitioners for setting aside order dated 25.08.2021 passed by learned MM (NI Act), (West), Tis Hazari Courts, Delhi whereby application under Section 311 Cr.P.C. preferred on behalf of petitioners was dismissed and opportunity to cross-examine PW-1 (Bhopal Singh Rana, Authorized Representative of the complainant) was closed.

2. Learned counsel for the petitioners submits that during pendency of proceedings before the learned trial court, Authorized Representative of respondent was changed repeatedly and third AR on behalf of the respondent was sought to be cross-examined by the petitioner. It is pointed out that cross-examination could not take place on 26.02.2019 since the



matter was adjourned by the court itself because of heavy pendency and thereafter, on 03.07.2019, the Presiding Officer was on leave. Further, vide order dated 27.09.2019, right of accused to cross-examine AR of complainant was closed taking note of an earlier order passed by learned trial court that no adjournment would be granted. It is urged that on 27.09.2019, adjournment had been sought by the proxy counsel for the petitioners/accused on the ground that counsel had been recently changed.

3. On the other hand, petition is opposed by learned counsel for the respondent and it is submitted that the concerned AR of the complainant who was examined as PW-1 before the learned Trial Court has since left the services of the respondent and is now substituted by another Authorized Representative. It is further submitted that since the concerned PW-1/AR is no longer in service of the respondent, it may not be feasible for the respondent to produce him for the purpose of cross-examination. It is contended that the ground taken on behalf of the petitioner for seeking an adjournment before learned Trial Court was not valid, since vakalatanama of the new counsel had not been filed on record.

4. On the face of record, learned Trial Court could not conduct cross examination on 26.02.2019 as well as 03.07.2019 for the reasons which cannot be attributed to petitioner. In the interest of justice, it may not be appropriate to curtail the right of the accused/petitioners to cross-examine the AR of complainant and one more opportunity is granted to the petitioners to cross-examine PW-1, subject to cost of Rs. 5,000/- to be paid to the respondent.

However since PW-1 is no longer in employment of respondent, an effort shall be made by the court to summon the witness or procure his



presence in accordance with law on necessary steps being taken on behalf of the petitioner. Respondent shall co-operate in providing the necessary particulars/details of the witness for enabling the learned trial court to summon the witness for the purpose of cross-examination.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to the learned trial court for information and compliance.

ANOOP KUMAR MENDIRATTA, J

FEBRUARY 23, 2024/v