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

+ **CRL.M.C. 1104/2025 & CRL.M.A. 5040/2025**

**M/S FLOW TECH AIR PVT LTD ORS .....Petitioners**

Through: **Mr. Rajesh Srivastava, Advocate.**

versus

**M/S AVCO ENGINEERS PVT LTD ANR .....Respondents**

Through: **Mr. Uttam Datt, Senior Advocate  
with Ms. Sonakshi Singh and Mr.  
Kumar Bhaskar, Advocates.**

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

% **17.02.2025**

**CRL.M.A. 5041/2025 (exemption)**

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

The application stands disposed of.

**CRL.M.C. 1104/2025**

By way of the present petition filed under section 528 read with section 529 of the Bharatiya Nagarik Suraksha Sanhita 2023, the petitioner impugns order dated 16.08.2024 passed by the Judicial Magistrate First Class-04, NI Act in Ct. Cases No.7719/2017, whereby the petitioners' right to cross-examine complainant/CW-1 has been closed.

2. Mr. Rajesh Srivastava, learned counsel appearing for the petitioner submits that the petitioner was never afforded a full and complete



opportunity to cross-examine the complainant in relation to the circumstances in which the cheque for about Rs.76 lacs was issued on 25.04.2017.

3. Counsel submits, that though it is correct that on several dates the matter was fixed for cross-examination of CW-1, however the matter would reach closer to lunch and the petitioners would therefore not get a proper opportunity to cross-examine CW-1.
4. The record shows that the complaint under section 138 of the Negotiable Instruments Act, 1881 was filed on 05.06.2017; and has been pending at the stage of recording complainant's evidence since 07.12.2019.
5. Moreover, a perusal of the impugned order shows, that since 2021 the petitioners had cross-examined CW-1 8-9 times; and on the said date i.e., 16.08.2024, the petitioners further cross-examined PW-1; and only thereafter, CW-1 was discharged.
6. Subsequently however, when learned counsel for the petitioners sought another opportunity to further cross-examine CW-1, the learned Magistrate was pleased to record as follows :

*“Matter is at the stage of further cross-examination of CW-1.  
CW-1 further cross-examined today and discharged as a witness.*

***His further cross-examination stands closed as sufficient opportunities have been granted to the Ld. Counsel for the accused persons and the questions are getting repeated. Further perusal reveals that CW-1 has been cross-examined 8-9 times since the year 2021 by Ld. Counsel for the accused.***

*Ld. Counsel for the accused submits that he wants to further cross-examine CW-1 as material questions are still yet to be asked and he further submits that he is ready to cross-examine after lunch*



*also and shall conclude today itself.*

*Perusal of record reveals that the present matter is at the stage of cross-examination since the year 2021. Ld. Counsel for the accused has examined CW-1 nine (9) times at length and this Court is of the opinion that several opportunities have been taken by the Ld. Counsel for the accused to delay the present matter whereas CW-1 has been sufficiently cross-examined at length. The Counsel for the accused persons is repeating the questions and asking irrelevant questions. The Counsel is abusing the process of the Court and deliberately trying to delay the trial. This Court cannot be a mute spectator on such a conduct of Ld. Counsel for the accused. In view of the above discussion, this Court does not deem it fit to grant any further opportunity to the Ld. Counsel for the accused to cross-examine CW-1. CW-1 is already been cross-examined nine (9) times by Ld. Counsel for the accused.*

***In view of the above discussion, further cross-examination of CW-1 Sh. P L Adlakha stands closed, in the interest of justice.***

***Ld. Counsel for the accused submits that this is arrogance of Court.***

***The Counsel is strictly directed to maintain decorum of Court.***

*Previous cost of Rs. 3000/- is reduced to Rs. 2000/- and the same is paid by the accused to the complainant in the Court today.”*

*(bold in original)*

7. On a perusal of the record, this court is unable to discern any justification or basis as to why the cross-examination of CW-1 was not completed by the petitioners over the last 04 years, despite 8-9 opportunities having been availed by them to do so.
8. Furthermore, it is observed that the impugned order is dated 16.08.2024 and thereafter 02 dates of hearing have passed before the learned Magistrate, but the petitioners have chosen to impugn the order of 16.08.2024 only now by way of the present petition.



9. The court is also informed that pursuant to order dated 16.08.2024, other witness in the list of witnesses filed by the complainant have also deposed; and complainant's evidence stands closed as-of 27.01.2025.
10. Upon an overall conspectus of the facts of the case and circumstances obtaining in the matter, and in particular the evidently dilatory approach adopted by the petitioners in cross-examining CW-1, this court is not inclined to entertain the present petition, which is accordingly dismissed at the stage of issuance of notice itself.
11. Pending applications, if any, also stand disposed of.

**ANUP JAIRAM BHAMBHANI, J**

**FEBRUARY 17, 2025/ak**