

**CRIMINAL REVISION**

Present: **The Hon'ble Justice Ashim Kumar Roy**

*C.R.R. No. 4526 of 2009*

**Judgment On: 31-03-2010.**

*Ashok Pattanayak*

*versus*

*M/s. Balaji Traders*

**POINTS:**

**CROSS-EXAMINATION:** This Court directed the Trial Court to conclude trial within one month-Accused prayed for adjournment on medical ground-Trial Court closed the evidence--- Right to cross-examine a witness, a very valuable right- No accused can be denied of such right-Negotiable Instruments Act, S.138-Code of Criminal Procedure, 1973 S.313.

**FACTS:**

This proceeding under Section 138 of the Negotiable Instruments Act was instituted upon filing of a complaint in the year 2003. Thereafter, the complainant moved this Court for a direction for expeditious disposal of the said trial when this Hon'ble High Court by an order directed the Trial Court to conclude the trial within one month from the date of communication of this order. Such order was communicated to the Learned Court below and on that day, the complainant was examined and cross-examined in part. On the very next day, the accused was absent on medical ground and a prayer for adjournment was made, however, the Learned Trial Court in view of the aforesaid direction of this Court closed the evidence and fixed the next date for examination of the accused under Section 313 of the Code of Criminal Procedure.

**HELD:**

The right to cross-examine a witness is a very valuable right of an accused and no accused can be denied of such right unless there is a very strong circumstance. In this case, the prayer for adjournment was made on medical ground. In the opinion of the Court, a chance may be given to the accused to cross-examine the complainant for ends of justice.

Para-5

For Petitioner: Mr. Arun Kumar Maity  
Ms. Kaberi Sengupta

## **THE COURT:**

1. This criminal revisional application is directed against an order whereby the Learned Court below in connection with a proceeding under Section 138 of the Negotiable Instruments Act closed the evidence and fixed the matter for examination of the accused under Section 313 of the Code of Criminal Procedure.

2. Heard Mr. Arun Kumar Maity, the Learned Counsel appearing on behalf of the petitioner. Perused the materials on record. In spite of service of notice upon the opposite party, none appeared on their behalf. Affidavit of service showing that the notice has been served upon them is with the records.

3. This proceeding under Section 138 of the Negotiable Instruments Act, in question, involving dishonour of a cheque of Rs. 2 lakhs was instituted upon filing of a complaint in the year 2003. Thereafter, the complainant moved this Court for a direction for expeditious disposal of the said trial when this Hon'ble High Court by an order passed in connection with C.R.R. No. 3110 of 2009 directed the Trial Court to conclude the trial within one month from the date of communication of this order. Such order was communicated to the Learned Court below on November 25, 2009 and on that day the complainant was examined as P.W. 1 and was cross-examined in part. On the very next day, the accused was absent on medical ground and a prayer for adjournment was made, however, the Learned Trial Court in view of the aforesaid direction of this Court closed the evidence and fixed the next date for examination of the accused under Section 313 of the Code of Criminal Procedure.

4. It is true that this Hon'ble High Court directed the Trial Court to conclude the trial within one month from the date of communication of the order, thus the Learned Court has not committed any wrong in closing the evidence.

5. However, the right to cross-examine a witness is a very valuable right of an accused and no accused be denied of such right unless there is a very strong circumstance. In this case, the prayer for adjournment was made on medical ground. In my opinion, a chance may be given to the accused to cross-examine the complainant for ends of justice.

6. Accordingly, the impugned order is set aside and it is directed within 10 days from this date the accused shall appear before the Learned Court below with notice to the complainant and the Learned Court below, in presence of both the parties, shall fix a date for cross-examination of the complainant. Such date must not be fixed beyond the period of one week. If on that day the defence fails to cross-examine the complainant, no further chance be given. Thereafter, the Learned Court shall conclude the trial positively within a month, strictly in terms of Section 143 of the Negotiable Instruments Act.

7. This application, thus, stands disposed of.

8. Criminal Section is directed to deliver urgent Photostat certified copy of this Judgment to the parties, if applied for, as early as possible.

( *Ashim Kumar Roy, J.* )