

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: October 31, 2015

1. **CRM-M-16077-2015 (O&M)**

M/s Tosiba Industries Ltd. and others

...Petitioners

Versus

State of Haryana and another

...Respondents

2. **CRM-M-16078-2015 (O&M)**

M/s Tosiba Industries Ltd. and others

...Petitioners

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

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

Mr. Kuldeep Tiwari, Addl. AG, Haryana,
for respondent No. 1.

Mr. N.S. Shekhawat, Advocate,
for respondent No. 2.

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| 1. | <i>Whether Reporters of local papers may be allowed to see the judgment?</i> | YES |
| 2. | <i>To be referred to the Reporters or not?</i> | YES |
| 3. | <i>Whether the judgment should be reported in the Digest?</i> | YES |

NARESH KUMAR SANGHI, J. (Oral)

This judgment shall dispose of above captioned two petitions, filed by the same petitioners under Section 482, Cr.P.C., challenging identical orders, dated 9.12.2014, passed by learned

Judicial Magistrate First Class, Faridabad, in Complaint Case Nos. 2950/2012 and 2949/2012, both dated 23.8.2012, whereby applications under Section 311, Cr.P.C., filed by respondent No.2/complainant for taking on record duly attested affidavit of Mr. R.K. Gupta (CW-2) by way of additional evidence, were allowed.

Mr. Sahil Sharma, learned counsel for the petitioners contends that the learned Trial Court has gone wrong in allowing the applications presented under Section 311, Cr.P.C., by respondent No. 2/complainant for taking on record duly attested affidavit of Mr. R.K. Gupta (CW-2) by way of additional evidence. He further points out that once a document, purported to be an affidavit of a witness, was tendered by respondent No.2/complainant, in that eventuality no further opportunity can be afforded to him (complainant) so as to rectify the mistake in the said document and thereafter file the fresh document.

On the other hand, Mr. N.S. Shekhawat, learned counsel for respondent No. 2/complainant, submits that there was an inadvertent mistake on the part of Mr. R.K. Gupta (CW-2), while producing his affidavits in three complaints filed by respondent No.2/complainant under Section 138 of the Negotiable Instruments Act, 1881, for bouncing of different cheques involving huge amount of approximately ₹1,90,00,000/- (Rupees one crore and ninety-lacs only). He further submits that after summoning of the petitioners,

respondent No.2/complainant was allowed to lead its evidence. Accordingly, respondent No. 2/complainant had examined three witnesses including Mr. R.K. Gupta (CW-2). He further points out that three separate affidavits in three complaints were to be tendered by Mr. R.K. Gupta (CW-2). However, due to inadvertent mistake, in one complaint only the attested affidavit was presented while in remaining two complaints the affidavits were produced without attestation from the authorized authority. The said inadvertent mistake came to the notice of respondent No.2/complainant during cross-examination of Mr. R.K. Gupta (CW-2) and immediately thereafter two separate applications under Section 311, Cr.P.C., were presented before learned Trial Court for taking on record duly attested affidavits of Mr. R.K. Gupta (CW-2) by way of additional evidence. He further submits that the aforementioned applications were correctly allowed by the said Court and, as such, there is no force in the present petitions and the same be dismissed. He further points out that the complaints filed by respondent No. 2 are pending adjudication since August, 2012 and the petitioners are adopting dilly-delaying tactics with a view to delay the trial so that the liability of paying huge amount is not fastened upon them. He further points out that before approaching this Court, the petitioners had filed three criminal revision petitions challenging the impugned order before the Sessions Court, but

after several months, the same were withdrawn and then the petitioners approached this Court by way of present petitions.

I have heard learned counsel for the parties and with their able assistance gone through the material available on record.

It is settled proposition of law that if there is some inadvertent mistake on the part of either of the party and the same is necessary to be rectified for proper adjudication, just decision of the case and to part justice to the parties, then the additional evidence can be permitted to be led.

There is no denial that as many as three complaints were presented by respondent No. 2/complainant. All the three complaints were being tried simultaneously and on the same day. When the cases were fixed for deposition of Mr. R.K. Gupta (CW-2), three affidavits were to be tendered in three separate complaint cases. However, inadvertently only one duly attested affidavit of Mr. R.K. Gupta (CW-2) was presented in one complaint while in remaining two, unattested affidavits were tendered and the said fact came to the notice of respondent No. 2/complainant during cross-examination of the said witness. Immediately thereafter, applications under Section 311, Cr.P.C., for taking on record duly attested affidavits of Mr. R.K. Gupta (CW-2) were presented by respondent No. 2/complainant and the same were allowed.

After going through the material available on record and hearing learned counsel for the parties, this Court finds that learned Trial Court has correctly allowed the applications presented by respondent No. 2/complainant and, as such, there is no infirmity, impropriety or illegality in the impugned orders dated 9.12.2014, passed by learned Court below. As such, there is no merit in the present petitions and the same are hereby dismissed.

A copy of this judgment be placed on the file of connected petition.

Before parting with the order, this Court deems it necessary to observe that since the complaints filed by respondent No.2/complainant are more than three years old, it is expected that learned Trial Court would expedite the trial

October 31, 2015
Pkapoor

(NARESH KUMAR SANGHI)
JUDGE