IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. M- No.34636 of 2014 (O&M)

111 Date of decision : 18.02.2015

Anil Juneja .....Petitioner

Versus

M/s S.A. Textiles ....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Harmandeep Singh Saini, Advocate
for the petitioner.

LISA GILL, J.

The petitioner prays for setting aside order dated 09.09.2014 passed by the learned Additional Sessions Judge, Panipat whereby the petitioner's application under Section 391 read with Section 91 Cr.P.C. for leading additional evidence has been dismissed. The petitioner is an accused in complaint No. 211/11 dated 03.12.2001. The applicant-appellant has been convicted and sentenced to undergo rigorous imprisonment for one year besides a fine of ₹ 2000/- for the offence punishable under Section 138 of Negotiable Instruments Act and further simple imprisonment for three months in default of payment of fine vide order dated 15.11.2011.

The petitioner preferred an appeal, which is pending before the learned Additional Sessions Judge, Panipat. Vide Application dated 27.08.2014 (Annexure P-2), the petitioner seeks to summon the record of the Sale Tax department i.e. office of D.E.T.C.

Panipat regarding the complainant firm as well as original bills and billties mentioned therein. It is submitted that the petitioner was in judicial custody during trial and he could not prove his defence in a proper and effective manner. In case, said documents are called for and produced in Court, it could prove that the bills etc. placed on record are bogus, false, manipulated and forged. Record of the Sales Tax department proves that there is no transaction, which took place on the dates mentioned by the complainant. Learned appellate Court has wrongly dismissed his application vide impugned judgment dated 09.09.2014.

I have heard learned counsel for the petitioner and gone through the file.

The petitioner issued two cheques for a sum of ₹ 2 lakhs each in favour of the complainant, which were dishonoured. Pursuant to which, the complaint was filed and the petitioner has been convicted therein.

In his defence, petitioner had taken a plea that the cheques in question were lying with one Shri Niwas and Chander Bakshi, who were the proprietors of the firm. The cheques were given by the said persons to the complainant as security which were misused. The bills produced by the complainant are stated to be false and fabricated. However, on perusal of judgment dated 14.11.2011 (Annexure P-4) and the petitioner's statement under Section 313 CR.P.C. it emerges that no plea regarding mentioning or otherwise of TIN or the Sales Tax of the bills and billities was raised.

Furthermore, it has come on record that cotton fabric supplied to the accused is free from sale tax through out India and, therefore, there was no question of Sales Tax number or TIN. It is further submitted that no prejudice shall be caused to the complaint in case this application is allowed.

Hon'ble Supreme Court in A***shok Tshering Bhutia Versus State of Sikkim (2011) 4 SCC 402*** has held that additional evidence can be permitted at appellate stage in a suitable case where the court is satisfied that ends of justice shall be served and to prevent failure of justice. However, this power has to be exercised with great circumspection in exceptional cases having due regard to concepts of fair play, justice and well being of society.

Learned counsel, on instructions from the petitioner who is present in Court, admits that he has not taken any action against the said proprietors Shri Niwas and Chander Bakshi till date for having handed over the said cheques. Keeping in view the facts and circumstances of the case, I find no illegality and irregularity in the impugned order dated 09.09.2014 which would warrant interference by this Court. Learned counsel is unable to point out any injustice, which has been meted out to the petitioner.

Dismissed.

February 18, 2015 (LISA GILL)
rts JUDGE