In the High Court of Punjab and Haryana, at Chandigarh

Criminal Misc. No. M-43101 of 2013

Date of Decision: 13.3.2015

Krishan Kumar Goel

... Petitioner(s)

Versus

Sheetal Riceland Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Darshan Singh.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present: Mr. Akashdeep Singh, Advocate
for the petitioner(s).

Mr. Kartar Singh Malik-I, Advocate
for the respondents.

Darshan Singh, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") for quashing the order dated 7.11.2013 (Annexure P4) passed by the learned Judicial Magistrate Ist Class, Rohtak on an application under Section 311 Cr.P.C. and the order dated 28.11.2013 (Annexure P5) whereby the revision petition, filed by the petitioner, has been dismissed.

2. The petitioner has moved an application under Section 311 Cr.P.C before the learned trial Court for summoning the witnesses along with the record in the complaint filed by him under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act"). In the said application, he had pleaded for summoning the concerned

Clerk/Record Keeper, Market Committee, Rohtak, the concerned Clerk/Record Keeper, Market Committee, Kaithal, the concerned Clerk/Record Keeper of the office of Excise & Taxation Officer, Kaithal along with the relevant record, the concerned Officer/Manager of Canara Bank, Branch at Chhatrawas Road, Kaithal along with the list of creditors for the relevant period and the concerned Clerk/official of the office of Income Tax Officer, Kaithal regarding the TDS deposited by the respondent No.1-firm. The said application was contested by the respondents.

3. The learned trial Court dismissed the application vide impugned order dated 7.11.2013. The petitioner preferred the revision against the order passed by the learned Magistrate but the same was also dismissed by the Sessions Judge primarily on the ground that the revision petition is not maintainable as the impugned order was an interlocutory order. Hence, this petition before this Court.

4. In the reply filed by the respondents, it has been pleaded that the statements of the respondents have already been recorded under Section 313 Cr.P.C. and the case was fixed for arguments. The evidence sought to be produced was already in the knowledge of the petitioner. The application has been moved by the petitioner only to fill up the lacuna. With these pleas, the respondents have pleaded for dismissal of the petition.

5. I have heard, Mr. Akashdeep Singh, Advocate, counsel for the petitioner, Mr. Kartar Singh Malik-I, Advocate, counsel for the respondents and have meticulously examined the case.

6. Learned counsel for the petitioner contended that vide order dated 18.12.2013, the petitioner has only confined his request to summon and examine the concerned Clerk from the office of the Excise and Taxation Officer, Kaithal along with the record as detailed in paragraph No. 3(iii) of the application (Annexure P3). He further contended that the said witness is to be examined only on the basis of official record, which cannot be manipulated by the petitioner. The said evidence is essential for the just decision of the case. The Courts below have wrongly declined this request.

7. On the other hand, Mr. Kartar Singh Malik-I, Advocate, counsel for the respondents pleaded that after availing number of opportunities, the evidence was closed by the petitioner. The statements of the respondents have already been recorded under Section 313 Cr.P.C. and the case has been fixed for arguments. He contended that the evidence now sought to be produced in the additional evidence was already in the knowledge of the petitioner. The present application has only been filed to fill up the lacuna in the present case after the respondents have disclosed their defence in their statements under Section 313 Cr.P.C. Thus, he pleaded that now the petitioner cannot be allowed to lead the additional evidence.

8. I have duly considered the aforesaid contentions.

9. The petitioner has filed a complaint under Section 138 of the Act against the respondents. This fact is not disputed that the petitioner has voluntarily closed his evidence and thereafter, the statements of the respondents have been recorded under Section 313 Cr.P.C. But the

Court has very wide power under Section 313 Cr.P.C. to summon any witness in the additional evidence if his evidence appears to be essential for the just decision of the case. The Hon'ble Apex Court in ***Rajaram Prasad Yadav v. State of Bihar and Another 2013(3) R.C.R. (Criminal) 726*** has laid down that if the evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine any such person. It was further laid down that exercise of such power cannot be dubbed as filling in a lacuna in the prosecution case. Unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice. It was further laid down that power vested under Section 311 Cr.P.C. is made available to any Court at any stage in any trial. Thus, as per the aforesaid ratio of law laid down by the Hon'ble Apex Court, the Court has wide power under Section 313 Cr.P.C. which can be exercised to summon and examine any person if his examination appears to be essential for the just decision of the case and this power can be exercised at any stage of the case.

10. In the instant case, the petitioner has confined his prayer only to summon and examine the concerned Clerk/Record Keeper of the office of Excise and Taxation Officer, Kaithal along with the record pertaining to respondent No.1 submitted with the said office with regard to purchase of paddy (material) by the said company from Jai Jagdamba Trading Company, New Grain Market, Rohtak during the period October 2009 to 31.12.2009 along with L.P.7 Form and VAT-C IV submitted by

the said company with the said office and also the list of Directors of the above said company.

11. As per the allegations levelled in the complaint, the complainant is running the business under the name & style of M/s Jai Jagdamba Trading Company and deals in the supply of food grains such as paddy, mustard, wheat etc. It is alleged that the complainant has supplied the paddy to the respondents as per their directions and orders placed with the complainant at Rohtak from time to time between 27.10.2009 to 13.11.2009 on credit basis. It is further alleged that he had supplied the material/paddy worth ₹ 5,47,05,129.12 ps. The part payment was already made. In order to clear the balance, the impugned cheque was issued which was dishonoured. In view of the allegations mentioned in the complaint, the evidence sought to be adduced in the additional evidence by the petitioner is essential for the just decision of the case. The said evidence is based on the record of the office of the Excise and Taxation Officer, Kaithal which cannot be manipulated by the complainant. So there is no question of filling any lacuna and the resultant prejudice to the respondents. Rather it will assist the Court to arrive at the just decision of the case.

12. It appears that the learned trial Court was swayed by the circumstances in declining the request of the petitioner that the case has reached at the stage of arguments, the evidence was closed by the petitioner voluntarily after availing sufficient opportunities and this evidence was already in the knowledge of the petitioner. As already discussed, the learned trial Court was required to see in order to

adjudicate the request of the petitioner as to whether the evidence sought to be adduced in the additional evidence was essential or not for the just decision of the case. But this issue has not been discussed by the learned trial Court in the impugned order. The learned Sessions Judge has dismissed the revision on technical ground of maintainability.

13. Thus, keeping in view the aforesaid discussion, the present petition is hereby allowed. The impugned orders are hereby set aside. The application filed by the petitioner under Section 311 Cr.P.C. stands allowed to the extent of summoning and examining the concerned Clerk/Record Keeper of the office of Excise and Taxation Officer, Kaithal along with the record mentioned in paragraph No. 3(iii) of the application under Section 311 Cr.P.C. (Annexure P3).

(Darshan Singh)
Judge

March 13, 2015
"DK"