

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M -5338 of 2017 (O&M)
Date of decision: 17.02.2017

M/s Jolly Creations

...Petitioner

Versus

Rajiv Chawla @ Raju Chawla

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. B.D. Sharma, Advocate for the petitioner.

Jitendra Chauhan, J. (Oral)

By filing the present petition under Section 482 of the Code of Criminal Procedure, the petitioner has sought quashing of the impugned order dated 16.11.2016 (Annexure P-4) passed by learned Addl. Sessions Judge, Ludhiana, vide which the application filed by respondent seeking permission to summon the record for cross examination of witness of petitioner was allowed.

It is contended that the impugned order dated 16.11.2016 is illegal and arbitrary in manner. The record sought to be produced by respondent is not relevant for the disposal of the issue in question. The respondent/accused was in the employment of the petitioner. Otherwise also, the record sought to be summoned is not pertaining to the period in question, thus, the same has no relevancy in the matter. The learned trial Court has rightly rejected the same by

observing that the same was filed as a delaying tactic.

Heard.

The learned Appellate Court in para No.6 has recorded as under:-

“6. Perusal of impugned order shows that the Ld. Magistrate had dismissed the abovesaid application of accused/revisionist for summoning of record to cross-examine CW1 merely on the ground that this application was filed as a delaying tactics and was without any merits. Nothing is mentioned in this order as to how this application was without any merits much less that by filing it the accused was delaying the trial proceedings. Perusal of zimni orders speak volumes about the conduct of the complainant party itself. Vide order dated 19.9.2012 accused was directed to be summoned. He put in appearance on 13.2.2013 and on same day notice of accusation was served upon him. Then started manifest move of complainant party to delay the proceedings. It availed over 30 effective opportunities to lead its after-notice evidence and on almost 90% of fixed dates the complainant party was represented by its counsel while its partner CW1 Rajnish Vatsa kept seeking exemptions from appearance which the Ld. Trial Court kept granting in its wisdom. At the cost of repetition it is noted here that notice of accusation was served upon accused/revisionist on 13.3.2013 and first time the complainant examined its witness as CW1 was on 19.10.2013. Then again he did not appear for cross-examination until 27.11.2014. He was partly cross examined on that day and on his undertaking to produce abovesaid record of Sale-tax Returns and VAT returns the matter was posted for next date. Yet he did not appear until 29.1.2015 on which date he showed inability to produce abovesaid record. Accused/revisionist has denied if

he had any liability to answer towards the complainant firm. Onus in this regard had to be on complainant. In this context the accused sought production of abovesaid documents. CWI did not part with the same. Accused/revisionist was left with no other option but to get the same summoned from the concerned quarters. He moved this application for production of these documents on the same day of 29.1.2015. Hence, patently there has been no delay on his part in conducting of proceedings. The documents sought to be summoned are relevant for proper adjudication of the matter as these statedly will show the non-existence of any liability in question by accused in favour of complainant firm. The application, therefore, had merits. Ld. Trial court had failed to exercise the vested jurisdiction in right earnest and had wrongly dismissed this application vide impugned intermediary order.”

On appreciation of entire material on record, this Court finds that there is no force in the assertions raised by the learned counsel. The learned Appellate Court has thoroughly dealt with the application in a right manner. There is no merit in the instant petition which is hereby dismissed.

17.02.2017
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No