

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 11960 of 2018 (O&M)
Date of decision : 22.3.2018

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M/s Ramdhari Virender Kumar and another
.....Petitioners

vs.

M/s Neeraj Kumar Anil Kumar
.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Parminder Singh, Advocate
for the petitioners.

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H. S. Madaan, J.

By way of filing the present petition, petitioners – M/s Ramdhari Virender Kumar Commission Agent, Anaj Mandi, Indri, District Karnal, through its proprietor Virender Kumar and Virender Kumar, as proprietor of that concern, crave for setting aside the order dated 23.1.2018 passed by Judicial Magistrate Ist Class, Karnal, vide which an application under Section 311 Cr.P.C. filed by the petitioners -accused in a complaint case, for recalling of complainant-respondent, for further cross examination, in the light of subsequent events/facts, had been dismissed, as well as judgment dated 8.3.2018

passed by Additional Sessions Judge, Karnal, vide which the revision petition preferred by the present petitioners had been rejected. The petitioners pray that their petition be accepted, the impugned orders passed by the Courts below be set aside and application under Section 311 Cr.P.C. filed by them, be allowed.

Briefly stated, facts of the case are that on 10.2.2012 M/s Neeraj Kumar Anil Kumar Commission Agent, Indri, through its proprietor Smt. Bimla Devi, had filed a complaint under Section 138 of the Negotiable Instruments Act, against M/s Ramdhari Virender Kumar, Commission Agent, Anaj Mandi, Indri, through its proprietor Virender Kumar and Virender Kumar as proprietor of that concern. The accused had been summoned and put in appearance and then the trial started. The complainant led evidence. Statement of the complainant was recorded. Thereafter, the accused moved an application under Section 311 Cr.P.C. for the purpose of recalling the complainant to face further cross examination for the reason that Sohan Lal claiming to be the attorney of Smt. Bimla Devi in a civil suit titled as 'Sohan Lal vs. Satpal', a suit for specific performance, pending in the Court of Additional Civil Judge (Senior Division) Indri, while appearing as a witness in his cross-examination, has stated that he and his wife used to live separately and as his wife Smt Bimla Devi is an illiterate and do not have any business and is only a homely lady etc. since it is a subsequent event, which has come to the notice of the accused, controverting Sohan Lal, with such statement is necessary for just decision of the case. This application was resisted by the complainant. Learned trial Magistrate dismissed the

application giving detailed reasons, which for the sake of convenience are reproduced as under:-

5. According to the Section 311 Cr.P.C. "Any court may, at any stage of any inquiry, trial or other proceedings under this Code. summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, and' the court shall summon and examine or recall and 're- examine any such person if his evidence appears to it to be essential to the just decision of the case. **Hon'ble Punjab & Haryana High Court in Jagseer Singh @ Sonu vs. State of Punjab 2012 (2), Criminal Court Cases [Cr.C.C.] 448(PNH)**, held that it is mandatory for the Court to summon witnesses in the case if said witnesses are necessary for just decision of the case. **Hon'ble Supreme Court of India in UT of Dadra and Haveli and Anothers Vs. Fathey, Mohan Singh 2006 (4) Cr.C.C 24 (SC)** observed that the exercise of power under under Section 311 Cr.P.C. should be resorted to only with the object to finding out the truth or obtain proper prove of such facts which lead to just and correct decision of the criminal case. Calling the witnesses or re-examine for the purpose of finding out the truth in order to enable the court to arrive just decision of the case cannot be dubbed as "filing in a

lacuna in prosecution case" . unless the facts and circumstances of the case make it apparent that the exercise of the power by the court would result in causing serious prejudice to the accused resulting in miscarriage of the justice.

6. Perusal of case file shows that in the present case witness Sohan Lal was examined by complainant in support of his case and he was duly cross-examined by learned counsel for the accused. No just and reasonable ground has been mentioned by applicant in his application as to why further cross-examination of witness is necessary for just and proper adjudication of the present case. Merely, because in civil suit titled as *Sohan Lal Vs. Satpal* also the witness Sohan Lal was examined and has taken contrary stand during cross-examination, is not a sufficient ground to recall the witness again for his further cross-examination in the present case. It appears that present application has been filed by applicant at this stage only to fill up lacuna in his case which is not warranted by law. Keeping in view law laid down by Hon'ble Apex Courts as discussed above coupled with the facts of present case, the present application is hereby dismissed being devoid of any merits.

Nothing in this order will effect the merits of the case when it taken for final decision.”

The petitioners went in revision, but were also unsuccessful there. I find that both the Courts below were fully justified in dismissing the application, finding it to be without any merit. Some replies given by Sohan Lal husband of Bimla Devi, proprietor of complainant concern, in civil litigation which does not have concern with the present case, are certainly not required to be put to Sohan Lal, by recalling him for the purpose of cross examination. The complaint in question is pending for the last six years. It appears that allowing the application would have resulted in a further stretching the proceedings without there being any justifiable reason.

The petition in hand lacks merit and is dismissed accordingly.

22.3.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No