

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

Crl. Misc. No.M-19668 of 2017

Date of Decision:- 06.08.2018

M/s Desire Clothing & anr.

....Petitioners

vs.

Nahar Industrial Enterprises Limited, Ludhiana

....Respondent

BEFORE :- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Petitioner No.2 in person.

Mr.Alok Jagga, Advocate,
for the respondent.

Sudhir Mittal, J.

This petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') is directed against order dated 12.9.2016 (Annexure P-4) whereby the learned Judicial Magistrate, Ist Class, Ludhiana has allowed the application under Section 311 Cr.P.C. for filing a fresh affidavit of the authorized signatory of the complainant-company.

2. A complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') has been filed by the respondent against the petitioners. In the said complaint, affidavit Exhibit C-A of Sh. Ram Parkash Bhangu, Senior Legal Manager was filed in preliminary evidence. A summoning order was issued and the accused appeared and the case was fixed for after notice evidence. Thus, the complainant was to be cross-examined. Meanwhile, Sh. Ram Parkash Bhangu left the service of complainant-Company and Sh. Munish Arora was appointed as the Senior Legal Manager. Thus, it was requested that Sh. Munish

Arora be permitted to be substituted as the Authorized Signatory of the complainant-Company and he be permitted to be examined in place of Sh. Ram Parkash Bhangu. Another application was moved under Section 319 Cr.P.C. for substitution of Sh. Ram Parkash Bhangu with Sh. Munish Arora.

3. Reply dated 9.2.2016 was filed on behalf of the petitioners-accused, wherein, the substitution was not opposed because it was not denied that Sh. Ram Parkash Bhangu had left the service of the complainant-company and Sh. Munish Arora had been appointed in his place. However, the prayer for examination of Sh. Munish Arora was vehemently opposed.

4. Vide the impugned order of the learned trial Court, Sh. Munish Arora was permitted to be substituted on the ground that an unforeseen event had intervened and no prejudice would be caused to the accused as he shall be given an opportunity to cross-examine the witness.

5. Petitioner No.2 is appearing in person. He argues that he has no objection to the substitution. However, the substituted authorized representative cannot be permitted to file a fresh affidavit in support of the complaint as that would amount to permitting the complainant-respondent to fill up the lacunae. He says that Section 254(2) Cr.P.C. is applicable in this case and, therefore, the trial Court may issue summons to any witness to produce any document or thing or to attend Court but the affidavit submitted by Sh. Ram Parkash Bhangu cannot be replaced by the affidavit of Sh. Munish Arora. Reliance is placed upon **Rajaram Prasad Yadav vs. State of Bihar and another, 2013(14) SCC 461** and **Hari Singh vs. State of Haryana, 2002(2)RCR (Criminal) 316.**

6. Sh. Alok Jagga, Advocate, representing the complainant-respondent submits that at the time of filing of the applications under Sections 311 and 319 Cr.P.C., the case was at the stage of Section 145(2) of the Act and the authorized signatory of the complainant-respondent was to be cross-examined. Thus, keeping

complainant-respondent and another person had been appointed in his place, no prejudice would be caused to the petitioners in case the earlier affidavit is replaced by the affidavit of present authorized signatory. This is essential because the present incumbent is to be cross-examined. Further, the affidavit filed earlier was verbatim the same as the complaint and the affidavit to be filed now is identical. He places reliance upon **The Associated Cement Company Limited vs. Keshvanand, 1998 (1) RCR (Crl.) 309** as well as **M/s. M.M.T.C. Ltd. vs. M/s. Medchl Chemicals & Pharma (P) Ltd. 2002 (1) R.C.R. (Criminal) 318.**

7. Having heard learned counsel for the parties and having gone through the records of this case, I am of the opinion that this petition has no merit.

8. The petitioners do not doubt the fact that the earlier authorized representative of the complainant-respondent has left its service. Since, a corporeal person is needed to represent the complainant-respondent in Court, the present incumbent would be the natural choice to substitute the earlier authorized representative. He becomes the *de facto* complainant and has to be cross-examined since the case is at the stage of cross-examination of the complainant. Cross-examination can only be of a person who has deposed/been examined in Court and, therefore, it is essential that the person substituted as the authorized representative be also permitted to file his own affidavit in support of the complainant. This view is supported by the judgment of the Supreme Court in **The Associated Cement Company Limited's case (supra)** wherein it has been held as follows:-

“24. Be that so, we suggest as a pragmatic proposition that no Magistrate shall insist that the particular person, whose statement was taken on oath at the first instance, alone can continue to represent the company till the end of the proceedings. There may be occasions when a different person can represent the company e.g. the particular person who represents the company at the first instance may either retire from the company's services or

may otherwise cease to associate therewith or he would be transferred to a distant place. In such cases it would be practically difficult for the company to continue to make the same person represent the company in the court. In any such eventuality it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court.”

9. In **MMTC Limited's case (supra)**, the said judgment has been followed.

10. The judgments cited by petitioner No.2 are not applicable to the facts of this case as the said cases were not of substitution of an authorized representative. In both the cases cited by petitioner No.2, Section 311 Cr.P.C. has been dealt with and it has been held that although the power of the Court under the said provision is very wide, it does not extend to permitting the prosecution to fill up lacunae. There is no quarrel with this proposition of law but the same is not attracted in this case.

11. In view of the above, the petition lacks merit and is accordingly dismissed. It is, however, made clear that the fresh affidavit to be filed in support of the complaint, shall be identical to the one filed earlier and no additions or alterations will be permissible.

August 06, 2018
poonam

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned

Yes

Whether Reportable

Yes