

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Misc. No.M-20324 of 2017 (O&M)
Date of decision : 27.08.2018

M/s Indo Asian Auto and another

... Petitioners

Versus

M/s Happy Steels (P) Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Rakesh Bhatia, Advocate
for the petitioner.

None for the respondent.

RAJ SHEKHAR ATTRI, J.(Oral)

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing of order dated 28.04.2017, passed by the learned Judicial Magistrate Ist Class, Ludhiana, vide which the application filed by petitioner under Section 311 Cr.P.C. for recalling CW1 Sanjeev Garg for cross-examination in a complaint case No.1682/2 dated 02.12.2011, under Section 138 of the Negotiable Instruments Act (in short 'the Act') titled as M/s Happy Steels (P) Ltd. vs. M/s Indo Asian Auto, was dismissed .

Respondent M/s Happy Steels (P) Ltd. (hereinafter referred to as 'the complainant) has instituted a criminal complaint under Section 138 of the Act against the petitioner. After appearance of the petitioner, evidence was adduced by the complainant.

However, petitioner moved an application under Section 311 Cr.P.C. for recalling CW1 Sanjeev Garg for further cross-examination asserting therein that on 04.09.2013, the case was fixed for further cross-

examination of said CW Sanjeev Garg but on that day, counsel for the petitioner was busy in another case. As such, the petitioner made a request before the learned trial court to adjourn the case for the purpose of further cross-examination but said request was declined and made the opportunity to cross-examine the said witness as nil. The said application was dismissed vide order dated 28.04.2017, while observing as under:-

“I have heard both the Ld. Counsel for the parties and have gone through the file with their able assistance. Perusal of the file shows that notice of accusation was served upon the accused and thereafter the accused availed several opportunities for cross examination of the Sanjeev Garg CW1. My Ld. Predecessor Court has closed the cross examination of the complainant by the counsel for the accused vide order dated 4.9.2013 and the case was fixed for other complainant evidence. On 26.9.2013 the complainant has closed his post notice evidence. Thereafter, the Ld. Counsel for the accused filed the instant application for recalling Sanjeev Garg CW1. It is well settled principle of criminal law that Court can't recall its own order. Hon'ble Supreme Court in Adalat Prasad vs. Rooplal Jindal, (2004) (4) RCR (Crl.) 1 (SC) has held that Cr.P.C. does not provide for review of its own order. Applicant can avail remedy available with him to go to revision against the order passed by this Court but this Court cannot recall its own order. So, I find no reason to allow the present application Under Section 311 Cr.P.C. for recalling complainant for cross examination. As such, the application is not maintainable and the same is hereby dismissed. Now to come up on 05.6.2017 for recording statement of the accused under Section 313 Cr.P.C.”

I have heard learned counsel for the petitioners and have gone through the record.

While holding the criminal trial, a Judge has to take in mind

inter alia the following factors:-

(a) providing the fair trial;

(b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, to the mind of this Court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. Equally, this is an integral part of a democratic polity which is governed by rule of law. It is ingrained in the concept of due process of law. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on arriving at an indubitable conclusion that substantial injustice has in fact occurred. Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another v. State of Gujarat and others**; 2006 (2) RCR (Criminal) 448 has held in para 25 and 26 as under : -

"25. In this context, reference may be made to [Section 311](#) of the Code which reads as follows:

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding 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."

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an

enquiry, trial or proceeding under [the Code](#) (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying [Section 311](#) of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under [the Code](#) and empowers Magistrate to issue summons to any witness at any stage of such proceedings,

trial or enquiry. In [Section 311](#) the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

Secondly, it is well settled that a Judge, while conducting a criminal trial, is not to be a mook spectator. A criminal trial is a search of truth. Therefore, a Judge has to intervene as and when required, especially to rule out his illegalities, irregularities or infirmities and also the inadmissible evidence.

To the mind of this Court, the opportunity to lead the further cross-examination of CW1 Sanjeev Garg is a part of fair trial and also is essential for just decision of the case.

In this view of the matter, the instant petition stands allowed and the impugned order dated 28.04.2017 is hereby set aside. The learned trial court is directed to give one opportunity to the petitioner to further cross-examine CW1 Sanjeev Garg.

27.08.2018

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**(RAJ SHEKHAR ATTRI)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No