IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

118

CRM-M-45101-2017

Date of decision: 19.01.2018

Rajesh Sharma **...PETITIONER**

VERSUS

Gagan Fibers Pvt. Ltd. **....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Manuj Nagrath, Advocate,
for the petitioner.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

The present petition has been filed challenging the order dated 01.11.2017 passed by the Judicial Magistrate Ist Class, Ludhiana, whereby an application under Section 311 Cr. P.C. preferred by the complainant (respondent herein) for permission to file fresh affidavit of Kishan Singh Makkar, authorized signatory/Managing Director of the complainant-Company and to tender into evidence, the carbon copies of invoices through which the goods were sold to the accused and copies of Form VAT 23 submitted by the complainant-Company to the Sale Tax Department, was allowed.

It is the contention of the learned counsel for the petitioner that by way of the additional affidavit, which has been filed under the guise of Section 311 Cr. P.C., the lacuna left out in the evidence by the complainant is sought to be fulfilled which would prejudice the right of the petitioner to defend himself.He further contends that by this course,virtually the complaint is being sought to be amended which would change the nature of the case itself,which cannot be permitted, at this stage,when the case was fixed for cross-examination of the complainant.

Having considered the submissions made by the counsel for the petitioner and having gone through the impugned order, the contentions, as raised by the counsel for the petitioner,cannot be accepted.

It is clearly come on record and in the application appended along with the additional affidavit that earlier authorized representative of the complainant-Company Randhir Kumar Talwar has since left the service of the complainant-Company and, therefore, the Company had no option but to authorize some other person in his place to prosecute the case on his behalf. Sh. Kishan Singh Makkar has been now authorized as the authorized signatory,who is also the Managing Director of the complainant-Company. The Board of Directors has, in its meeting dated 30.10.2015,authorized him to pursue and continue the complaint and he has been allowed to furnish affidavit by way of examination-in-chief in support of complainant along with bills in question and copies of form of VAT 23 and 24 by way of additional evidence.

It is not a case where the cross-examination of the complainant is over and unfortunately,the authorized person has left the service of the complainant-Company and, therefore,the complainant had no option but to substitute another person, that is precisely what the respondent-Company has done. Apart from that, no prejudice is caused to the petitioner by allowing the filing of fresh affidavit of Kishan Singh Makkar,the authorized signatory, as all these documents are part of the record and are maintained during the course of ordinary process. Apart from that, the petitioner would have all the opportunities to cross-examine the witnesses as their cross-examination has not yet been given effect to.

There being no illegality in the order passed by the Court below, no interference by this Court is called for.

Finding no merit in the present petition, the same stands dismissed.

January 19, 2018 **(AUGUSTINE GEORGE MASIH)**
pj **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No