

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-15903-2018

Date of Decision:25.09.2019

M/s Nahar Capital and Financial Services Ltd.

...Petitioner

Versus

Meenu Aggarwal

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Aalok Jagga, Advocate for the petitioner.
None for the respondent.

ANIL KSHETARPAL, J.

Despite service, respondent is not present. Respondent-accused after closure of defence evidence filed an application under Section 311 of the Code of Criminal Procedure for permission to lead additional evidence for examining the complainant. The aforesaid application was dismissed vide order dated 24.10.2016. The revision against the dismissal of the application was also dismissed on 31.07.2017 by the Court of Sessions. The respondent filed a petition under Section 482 Cr.P.C. bearing CRM-M-No.5638 of 2018, which was disposed of with the following order:-

“Counsel for the petitioner, after arguing for some time, prays for withdrawal of the present petition with liberty to take all the pleas and grounds, as have been taken in the present petition, before the trial Court at the appropriate stage.

Dismissed as withdrawn with liberty aforesaid.”

Respondent filed an application before the Judicial Magistrate

with the following prayer:-

“It is therefore respectfully prayed that the application for implementing the order of Hon'ble High Court dated 09.02.2018 by recalling and re-examining CW Dharampal for comforting with the pleas taken before Hon'ble High Court may kindly be allowed and CW Dharam Pal may be recalled for further cross examination in order to confront with all the above pleas and documents related thereto in the interest of justice and fair decision of the case as ordered by the Hon'ble High Court.”

On the aforesaid application, the Judicial Magistrate passed the following order:-

“The present application has been filed by the accused for implementing the order dated 9.2.2018 passed by Shri Augustine Gorge Masih, J. Judge, Hon'ble Punjab & Haryana High Court. The application of the accused under Section 311 Cr.P.C was dismissed by the trial court and later on the same was also dismissed by the Ld. Sessions Court in appeal. The accused has filed an appeal in which the Hon'ble Punjab & Haryana High Court vide order dated 9.2.2018 has disposed off the appeal filed by the accused as dismissed as withdrawn and has given liberty to file a fresh application taking all the pleas and grounds that were taken by the accused before the Hon'ble High Court and before the trial court. In his reply the complainant has opposed the present application of the accused . However the order dated 9.2.2018 is very much clear and the Hon'ble High Court vide its order dated 9.2.2018 has given an opportunity to accused to again file the said application by taking all the grounds and pleas as taken before the Hon'ble High Court . As such the accused was directed to file fresh application only on the grounds taken up by the accused before the Hon'ble High Court . The accused was also directed to file certified copy of the petition filed before the Hon'ble High Court which was disposed off as dismissed as withdrawn vide order dated 9.2.2018. Now to come upon

17.4.2018 for filing of said application.”

The grievance of the petitioner is that the learned Judicial Magistrate has misinterpreted the order passed by this Court on 09.02.2018. The petition under Section 482 Cr.P.C., challenging the orders passed by the Judicial Magistrate dated 21.08.2019, affirmed in the revision vide order dated 31.07.2017 was filed and this Court only permitted to withdraw the petition with liberty to take all the pleas and grounds before the learned trial Court. However, such liberty cannot be interpreted to mean that this Court has issued any direction. The fresh application, if any filed, has to be examined by the Court only if it is maintainable. The liberty granted by this Court does enable the respondent to move an application, in violation of law.

Accordingly, the present petition is disposed of, by clarifying that the liberty as granted by this Court vide order dated 09.02.2018 does not amount to direct decision of fresh application, even if not maintainable. The fresh application, if any, shall be required to be decided in accordance with law.

25.09.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No