

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18696-2016 (O&M)

Date of decision: 11.03.2019

The Hoshiarpur Express Transport Company Ltd.

....Petitioner

Versus

Jagbir Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Bansal, Advocate
for the petitioner.

Mr. R.S. Bains, Advocate
for respondent No.1.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition, filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, is for quashing of the order dated 16.05.2016 (Annexure P-7), passed by the trial Court, vide which an application, filed by the petitioner/accused under Section 65 of the Indian Evidence Act to produce the certified copy of a resolution dated 04.10.2008 by way of leading secondary evidence, was dismissed.

Learned counsel for the parties are ad idem that vide judgment dated 24.01.2019 passed in CRM-M-18695-2016, CRM-M-18697-2016 & CRM-M-18698-2016, following order has been passed by this Court: -

“This common order shall dispose of above noted three criminal petition as they are identical in nature, however, for the sake of convenience, facts are being extracted from CRM-

M-18695-2016.

Prayer in this petition, filed under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, is for quashing of order dated 16.05.2016 (Annexure P-7), passed by the trial Court, vide which, an application, filed by the petitioner/accused under Section 65 of the Indian Evidence Act to produce the certified copy of a resolution dated 04.10.2008 by way of leading secondary evidence, was dismissed.

Brief facts of the case are that respondent No. 1/complainant filed a criminal complaint against the petitioner/company that petitioner/company entered into an agreement with the complainant to take possession of two buses bearing registration Nos. PB-07-N-7272 and PB08-9854 along with route permits from Hoshiarpur to Ropar with two return trips and additional route permit from Hoshiarpur to Bharapur with one return trip for plying. It is further stated in the complaint that accused No. 3 Rajinder Singh was the Director of the Company at the time of institution of the complaint and he along with Gurmej Singh Mandali entered into an agreement with the complainant on behalf of the petitioner/company and as per the said agreement, accused has agreed to take possession of two buses along with three route permits and accordingly buses were handed over to the accused. It was further agreed in the agreement that the accused shall pay certain amount to the complainant in lieu thereof, however, when the accused failed to pay the said amount to complainant, a one time settlement of Rs. 16,50,000/- was agreed to be paid to the complainant by the aforesaid accused. For the said purpose, four cheques for the total amount of Rs. 16,50,000/- dated 24.11.2009 were issued by the accused which were signed by aforesaid two persons as

Directors of the Company. When the cheques were presented before the bank, the same were dishonored with the remarks 'insufficient funds' and thereafter, four separate complaints were filed on 08.02.2010 in which, the trial Court passed order dated 02.03.2010 summoning the petitioner/company along with Rajinder Singh and Acchar Singh Saroha (now dead).

*The case is now fixed for the defence evidence of petitioner/company and an application was moved by the petitioner under Section 65 of the Indian Evidence Act for granting permission to produce the certified copy of a resolution dated 04.10.2008 by way of secondary evidence. It is stated in the application that the petitioner wants to prove resolution dated 04.10.2008, vide which the aforesaid Rajinder Singh Tohra, accused No. 3, was removed from the post of Managing Director-cum-General Manager and Jasvir Singh Raja was appointed as Managing Director-cum-General Manager of the petitioner/company. The petitioner, thus, pleaded that aforesaid resolution dated 04.10.2008 was exhibited as Ex. PX in the Civil Suit No. 74 dated 25.05.208 titled as **Hoshiarpur Express Transport Company Ltd. vs. Sujan Singh and others.***

In the aforesaid civil suit, an application was moved to change the name of Jasvir Singh @ Raja as Managing Director-cum-General Manager and to substitute him with one Manjeet Singh Lalli who was plaintiff No. 3 in the said civil suit. It was also stated in the application that the original record of the said resolution dated 04.10.2008 is not in possession of the petitioner/company, however, its certified copy is proved and exhibited in the said civil suit and, therefore, the petitioner be permitted to lead secondary evidence by proving on record the aforesaid resolution by

taking its certified copy (Ex. PX in the said civil suit). It is also stated in the application that the request in the civil suit for substituting plaintiff No. 3 was allowed by the Civil Court while accepting the said resolution as it was a suit pertaining to dispute between the inter se management and shareholders of the company.

The respondent/complainant contested the aforesaid application and the trial Court, vide impugned order dated 15.05.2016, dismissed the application. The operative part of the order reads as under:

“8. Vide this application, Ld. Counsel for accused Jasvir Singh Raja wants to produce and prove the certified copy of resolution dated 04.10.2008 by way of secondary evidence. With regard to producing the said certified copy, it is sufficient to note that certified copy of resolution has already been placed on record alongwith this application. Perusal of said document reveals that Ex. PX was marked in that Civil Suit upon the said resolution. Sobha Rani case is not applicable here as mere exhibition of document is some other case does not dispense with its mode of proof. It has been alleged that document Ex. PX (original) is not available in that civil suit. At the most, this certified copy already placed can be verified. If original were lying that file then situation could have been different. Only way to prove this document is to examine author of this document. Summoning civil suit file will not serve any purpose.

9. Other authorities are also not applicable as certified copy of resolution is already on record and in other file also original is not available.

10. So application being sans merit stands dismissed.”

Learned counsel for the petitioner/company has argued that the proposed secondary evidence is the certified copy of a resolution dated 04.10.2008 which was exhibited as Ex. PX in a civil suit and it is clear from the order dated 01.04.2009, passed in the said civil suit, that on the basis of the same, one of the plaintiffs was substituted.

It is further argued that the original record of the resolution dated 04.10.2008 is not in possession of the petitioner/company and, therefore, the petitioner has moved the application praying for leading secondary evidence which has been dismissed by the trial Court.

*Learned counsel for the petitioner has relied upon **2012 (4) R.C.R. (Civil) 229, M/s Racco Enterprises, Ludhiana vs. Vivek Kapila & others**, wherein this Court, while allowing an application to lead a secondary evidence in a civil suit, has held that where the plaintiff has been able to show that original document i.e. an agreement to sell and a receipt have been lost and in that regard, he has lodged a report with the police station concerned, the existence of the document is not disputed and allowed the secondary evidence.*

*Learned counsel for the petitioner has also relied upon **1998 (3) Civil Court Cases 637 (P&H) Smt. Sobha Rani vs. Ravi Kumar & others**, wherein a similar view has been taken.*

In reply, learned counsel for the respondent/complainant, on the basis of the his affidavit/reply, has submitted that petitioner/company through its Managing Director-cum-General Manager Rajinder Singh and Gurmej Singh Mandali had entered into an agreement of taking possession of two buses along with route permit from Hoshiarpur to Ropar with two return trips and additional route permit from Hoshiarpur to Bharapur and has relied upon copy

of the agreement dated 12.05.2005, which is on record. It is further submitted that thereafter, the petitioner/company lodged an FIR No. 139 dated 25.08.2010 against respondent No. 2 and his associates for acting against the interest of the company and for removing some record along with register containing the resolution vide which respondent No. 2 i.e. Rajinder Singh was allegedly removed from the post of Managing Director-cum-General Manager in the year 2008. The Judicial Magistrate First Class, Hoshiarpur, vide its judgment dated 03.09.2016, has acquitted the said accused as the petitioner failed to prove the allegations against him.

Learned counsel for the respondent/complainant has further submitted that on the same set of allegations, now the application for leading secondary evidence has been moved with a plea that has already been disbelieved by the JMFC, Hoshiarpur while deciding the criminal trial arising out of aforesaid FIR No. 139.

It is further submitted that the ingredients and conditions for leading secondary evidence are not made out in the present case and the application has been moved just to delay the proceedings of the case as the petitioner despite having entered into a settlement with the complainant and having issued four cheques for a total sum of Rs. 16,50,000/-, which were later on dishonored by the bank, is trying to create evidence which is not admissible at all.

It is further argued that the complainant was not a party in the civil suit where the aforesaid resolution was produced by the petitioner and the very fact that it was produced on record only for the purpose of substituting one of the plaintiffs in an inter se dispute between the management and shareholders of the petitioner/company shows that the Civil Court never

accepted the said resolution as a legal evidence as it was only for the purpose of substituting one of the plaintiffs and, therefore, it cannot be termed as a public document as per Section 65 of the Indian Evidence Act. Hence, the case of the petitioner is not covered under the provisions of Section 63 of the Indian Evidence Act.

After hearing learned counsel for the parties and having gone through the documents available on record, I find no merit in the preset petitions.

A perusal of the photocopy of resolution, which is placed on record as Annexure P-3, would show that it is a resolution which was marked as Ex. PX in a civil suit on 21.10.2009, however, a perusal of order dated 01.04.2009, relied upon by the petitioner, nowhere mentions that the original of this resolution dated 04.10.2008 was produced before the Civil Court and thereafter, the same was exhibited. The order is also silent about the scribe of the said resolution or any person who has signed the same, who has appeared as a witness to prove the said document. More so, it was produced along with a miscellaneous application before the Civil Court for substituting one of the plaintiffs and, therefore, the Civil Court had no occasion to apply its mind and while accepting the said document, the Court had neither seen the original of the same nor scribe or any of the signatories of the resolution has appeared to prove the same and, therefore, in my opinion, the same cannot be termed as certified copy of the resolution dated 04.10.2008 as per Section 63 of the Indian Evidence Act or as a document which is admissible under Section 79 of the Indian Evidence Act.

It is also worth noticing that the petitioner is facing prosecution in proceedings under Section 138 of the

Negotiable Instruments Act on account of dishonoring of four cheques for a total value of Rs. 16,50,000/- which as per the complainant were issued as a settlement between the petitioner and complainant, arising out of an agreement for plying two buses in view of an earlier settlement dated 12.05.2005 between them.

Even further, the petitioner/company has failed to produce on record any document or the statement of the complainant wherein in the cross-examination any such suggestion was given to the complainant that accused No. 3 Rajinder Singh was not the Managing Director-cum-General Manager of the company on the date when the aforesaid agreement was entered into between the petitioner and the complainant and, hence, filing of application for leading secondary evidence is only to delay the proceedings before the trial Court.

In view of the above discussion, finding no ground to allow the petitioner to lead proposed secondary evidence, these petitions are hereby dismissed.

The trial Court is directed to conclude the trial expeditiously, preferably within a period of six months.”

Since this petition is also arising out of similar dispute between the parties, the same is dismissed in terms of the aforesaid order dated 24.01.2019 passed by this Court.

[ARVIND SINGH SANGWAN]
JUDGE

11.03.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No