

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

203

CRM-M-5551-2016 (O&M)
Date of decision: 09.04.2019

The Naharpur Primary Agri. Co-op. Societies Ltd. **Petitioner**

Versus

State of Haryana and others **Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. G.C. Shahpuri, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. AG, Haryana.

Mr. Rakesh Bakshi, Advocate
for respondent No.2.

Mr. Inderjeet Singh, Advocate
for respondents No.3 and 4.

Mr. Gautam Kaile, Advocate
for respondent No.5.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order dated 01.02.2016 whereby application filed by the prosecution for permission to lead additional evidence as provided under Section 311 of the Code of Civil Procedure has been dismissed by the trial Court. At the outset, it must be noticed that learned counsel appearing for the respondent has submitted that against the impugned order only revision is maintainable. Learned counsel for the petitioner had produced an order passed by the Revisional Court dated 10.02.2016 on the revision petition filed by the petitioner but withdraw the same under the impression that the revision petition is not maintainable.

The objection of learned counsel for the respondent even if accepted, the power of revision is concurrent with Sessions Court as well as before this Court. Accordingly, this petition can very well be treated as revision petition.

The petitioner while filing the application had pointed out that it wishes to examine the following witnesses and produce the documents explained thereunder. The Para 4 and 5 of the application are extracted as under:-

“4. That the applicant-complainant wants to examine the following witnesses:

- i. Shri Shyam Lal, Auditor posted at Auditors Office, Opp. E.S.I. Hospital Jagadhri Road, Yamuna Nagar (To prove the report Mark A and audit report prepared at the time of audit).*
- ii. Shri Pardeep Walia (Then Clerk, Head Office, The Yamuna Nagar Central Co-op. Bank, Yamuna Nagar) (To prove the checking of record of Khajuri/Naharpur PACS dated 27.11.2009).*
- iii. Shri J.K. Jain s/o Sh. Rattan Lal Jain r/o VPO Sadhaura, P.S. Sadhaura, District Yamuna Nagar (The then Senior Accountant Head Office, The Yamuna Nagar Central Co-op. Bank, Yamuna Nagar) (To prove the checking of record of Khajuri/Naharpur PACS dated 27.11.2009).*

5. That the applicant-complainant wants to tender the following documents:

- i. Audit report Mark-A and Audit Report prepared by Shyam Lal, Auditor.*
- ii. Posting order of the accused.*
- iii. Checking report dated 27.11.2009.*
- iv. Inspection/visit book for the period of 27.09.2001 to 25.06.2005.*
- v. Application bearing No.1782 dated 09.06.2010.*
- vi. Order dated 06.09.2001.”*

It will be noted that the application was filed by the society who was complainant. The application was counter signed by public prosecutor.

Learned trial Court dismissed the application on the following grounds:-

1. The application filed is through a person who is not competent.
2. No reasons have been given in the application nor explained at the time of arguments as to why these witnesses are necessary or the documents which are sought to be produced would help the Court in adjudicating the dispute in a proper manner.
3. No explanation has been given as to why these documents and the evidence witnesses were not produced.

This court has heard learned counsel for the parties at length and with their able assistance gone through the documents filed by the parties.

It will be noted that the complaint was filed by Dinarpur Primary Agriculture Cooperative Societies Ltd. Initially, the complaint was made to the police through Surjit Singh, Managing Director of the Society. Since he died, therefore, the application was filed for substitution of authorized representative which was allowed on 06.01.2016.

In any case, once the Cooperative Society is a legal entity, it has to be represented by a representative. Hence, the Court was in error in recording that the application which was filed through Sh. Ram Rattan who was Branch Manager of the Society is not maintainable. The Court has failed to notice distinction between a natural person and a legal entity.

As regards second reason, learned trial Court has clearly

overlooked contents of the application which has been extracted above. Against name of each of the witness sought to be examined, it has been explained as to why he is required to be examined. Hence, the trial Court was not correct in making the observations.

As regards next reason, it will be noted that the Courts are here to do substantive justice between the parties. Section 311 of the Code of Criminal Procedure gives wide powers to the Court to allow the application for production of evidence at any stage of the inquiry, trial or other proceedings. The power of the Court is not circumscribed by any restrictions. The only thing which the Court is required to be examined is whether the evidence appears to be essential to the just decision of the case. So stress is on the just decision of the case.

Learned counsel for the respondents have argued that the respondents would be prejudiced as they have disclosed their defence and it would amount to de novo trial. No doubt, there would be some delay in the decision of the case, however, the Court cannot shut the evidence which is sought to be produced which may help the Court in adjudicating the case. The Courts have been created to do substantive justice between the parties rather than being bogged down with procedural aspect of it unless it is absolutely necessary. As regards prejudice being caused to the accused, it will be noted that they are on bail and the trial of the case can be got concluded by requesting the trial Court to expedite the decision of the case after granting opportunities to both the parties. As regards objection of learned counsel that this would amount to de novo trial, it will be noted that the case is still pending before the trial Court and the case set up by the prosecution is based upon documentary evidence which unfortunately was

not collected by the Investigating Agency.

Learned counsel for the respondents has submitted that the witnesses which have already examined may be required to be re-examined. If that is so, the respondent-accused would be entitled to move appropriate application before the Court which would take decision thereon.

Keeping in view the aforesaid facts, the order under challenge is set aside. The application under Section 311 of the Code of Criminal Procedure shall stand allowed. The prosecution would be granted two opportunities to produce its entire evidence. The accused would also be granted two opportunities to lead counter evidence and thereafter, the Court would decide the case positively, within a period of 6 months.

Hence, the petition is allowed.

09.04.2019
Dinesh Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No