S.No.138

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

Date of Decision:09.09.2019

1. CRM-M-38004 of 2019 (O&M)

Bharant Sanchar Nigam Ltd., Rewari .....Petitioner

Vs.

State of Haryana and others .....Respondents

2. CRM-M-38035 of 2019 (O&M)

Bharant Sanchar Nigam Ltd., Rewari .....Petitioner

Vs.

State of Haryana and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. H.P.S. Ghuman, Advocate
for the petitioner.

****

Rajbir Sehrawat, J.(Oral)

This order shall dispose of two petitions, CRM-M-38004 of 2019 and CRM-M-38035 of 2019. The parties in both the cases are same. Even the relief claimed in both the petition is almost the same. In both these petitions the petitioner has challenged the order passed by the trial court; whereby the petitioner has been ordered to appear as a witness, in the Criminal Complaint and in an another Enquiry being conducted for the purpose of section 340 Cr.P.C., respectively, and to produce the evidence mentioned in the summons issued to it.

Petition CRM-M-38004 of 2019 has arisen from a complaint filed by the respondent No. 2 against respondent No. 3; in which, basically, it is alleged that the accused-respondent No.3 has misused official position and have caused loss to the petitioner company and he has also misappropriated funds of the company. The main allegation in the complaint is that earlier the respondent No. 2 had filed a complaint under section 156 (3) Cr.P.C. and had prayed to the court of magistrate to refer the matter to the police for registration of the case against the respondent No. 3 and to investigate the same. Upon the direction of the Magistrate in the matter; the FIR No.12 dated 16-01-2010 under Section 7, 13(1)(d) of Prevention of Corruption Act was registered against the respondent No.3; with the allegations that the respondent No. 3 had issued broadband connections to certain parties by taking bribes; although they were not entitled to the obtain the connection under the schemes under which the connections were given to them. Therefore, the respondent No. 3 had committed offence under Prevention of Corruption Act. Thereafter the investigation was conducted by the police. However, the respondent No. 3 filed a petition before this court for questioning of the said FIR. Notice has been issued by this Court in that petition. Although respondent No. 3 was personally an accused in the abovesaid FIR, however, he visited the High Court, Chandigarh, for filing of the abovesaid quashing petition, in his official car. He also engaged a counsel, allegedly, on authorization from the petitioner company, and even the fees of the Counsel were paid from the funds of the company. The respondent No. 2 again approached the police for registration of an FIR against respondent No.3; with the allegation that the respondent No. 3, while going to and coming from Chandigarh, misused the official car and the funds of the petitioner company. Since the respondent No. 3 was accused in his personal capacity, therefore, he could not have used the official vehicle for his travels from Rewari to Chandigah only for the purpose of filing a petition before the High Court. The respondent No. 3

availed the TA/DA for the said visit and even the fee for the Counsel, engaged by the respondent No.3, has been paid from the funds of the company. All this has been done by the respondent No.3 without any sanction or approval from the competent authority of the company. It was alleged that the respondent No. 3 was never authorized to use the said vehicle for his personal visits for travelling to Chandigarh, only to defend criminal case against him. He was not authorized to use the money of the Company for defending the case, in which he was an accused in his personal capacity. However, no action was taken by the police on this complaint.

On the above allegations initially the respondent No.2 filed a complaint before the Magistrate. However, the Magistrate dismissed the complaint on the ground of locus-standi of the complainant and on the ground that necessary sanction for prosecution; as required under section 197 Cr.P.C. had not been obtained. The respondent No.2 challenged the said order in revision. The revisional court reversed the order of the Magistrate and directed reconsideration. On reconsideration, the Magistrate issued summoning order dated 10-06-2015 against the respondent No.3; under section 409 IPC. The revision petition filed by respondent No.3 was also dismissed vide order dated 02-06-2016. The respondent No.3 approached this court against the said order vide CRM-M-29738-2016, which is stated to be pending with interim stay against the proceedings of the trial court.

It appears that after getting more information under RTI the respondent No.2 again made a complaint to the police on 22-12-2017 for registration of the FIR against respondent No.3; making additional allegations regarding tempering of the log-book, claiming and obtaining money from the company by making fake bills and creating unauthorized permissions. On this complaint made by the respondent No.2 another FIR No. 703 dated 26/12/2017 was registered against respondent No. 3 under section 120-B and 409 IPC. However, the complainant was not satisfied with the sections of offences invoked against the respondent No.3. Therefore he filed his private complaint before the Magistrate dated 21-05-2018 (Registered on 20-09-2018); alleging offences which were not included by the police in FIR No. 703; and which were not part of even the earlier complaint, proceeding of which were stayed by this court. The magistrate started proceedings in this complaint and the case was at the stage of preliminary evidence. However, during investigation in FIR No.703 dated 26-12-2017 the respondent No.3 impressed upon the police that with somewhat similar allegations the complainant had initiated another complaint in the year 2010-11 also; proceedings of which had been stayed by the High Court. Therefore the police presented a cancellation report before the Magistrate on 20-10-2018. However, since the complaint dated 21-05-2018 filed by respondent No. 2 was already fixed for evidence of complainant, therefore, the Magistrate clubbed the cancellation report and the complaint; vide order dated 30-04-2019. Thereafter the impugned summons dated 22-07-2019 has been issued for production of the evidence, specified therein. The petitioner company is challenging the said summons issued to it; as a witness.

The facts giving rise to another CRM-M-38035 of 2019 are that the respondent No. 2, besides being an advocate, is also a correspondent of the daily Newspaper Punjab Kesri. In his capacity as a correspondent he made certain reports to the news paper regarding the alleged wrong doings of the respondent No.3 and also regarding misappropriation of company funds by him. The reports were published in the daily news paper Punjab Kesri. Taking offence at that the respondent No. 3 filed a criminal complaint in the year 2013, against the respondent No. 2 and the Editor of the Newspaper for the offence of defamation under Section 500, 501 and 502 IPC. However, this complaint was filed on behalf of the petitioner company, but by respondent No.3, claiming to be the authorized representative of the company. During the trial authorization for respondent No.3 to file the complaint was again questioned by the respondent No.2 on the basis of some RTI information. When cornered, the respondent No.3 had pleaded that he himself had also been defamed for the same publication. On this plea; the Magistrate had taken the said complaint in the individual capacity of the respondent No.3. In that complaint respondent No.2 was ultimately, convicted. What happened to that case thereafter; has not come on record of this petition. However, in that complaint respondent No.3 led the evidence for conviction of the respondent No.2. Therefore, the respondent No.2 moved an application before the court that the respondent No.3 had misled the court during the trial. He was not even authorized by the petitioner company to file complaint for defamation. Even as a witness he had made factually incorrect statement against the records of the company. He had withheld the relevant documents and had produced fake documents before the court. Hence the proceedings under section 340 Cr.P.C be initiated against respondent No.3. Court proceeded further in that application and during those proceedings under Section 340 Cr.P.C, the court has summoned the petitioner company to appear; as a witness; and to produce certain records, which has been mentioned in the summons itself.

One more fact which deserves to be noticed, and which appears from the record, is that both the parties, the respondent No. 2 and No. 3, are in fierce legal battle and both of them have been facing trial in some or the other case, filed by other side. In this battle the respondent No. 3 appears to be taking advantage of and shelter under his status as an officer of the petitioner govt. company and the respondent No. 2 appears to be utilizing his profession as an Advocate. Both appear to be using and misusing their respective status and skills for, for whatever, purposes.

However, the fact remains that in the present proceedings what is under challenge is, only the summons issued to the company for appearing as a witness and to produce the records, mentioned in the summons itself. Still further, a note is mentioned in the summons itself that if some of the summoned document / record is not available then a certificate from the competent authority; to this effect; be produced.

While arguing the case ld. counsel for the petitioner has submitted that the action of the trial court in summoning the petitioner company as a witness is totally illegal and is a misuse of the process of the court. It is submitted that the respondent No. 2 has filed several complaints and litigations involving the respondent No. 3 who happens to be the officer of the petitioner company. Since the respondent No. 2 happens to be habitual litigant, therefore, the trial court should not have called the petitioner company as a witness in the proceedings initiated by him. Still further it is submitted that several of the litigations initiated by the respondent No. 2 have been challenged before the High Court and this court has stayed the further proceedings before the trial court in those cases. Still further it is submitted by the counsel for the petitioner; that the information directed by the trial court to be produced by the petitioner company as a witness; is indefinite and voluminous. The summons does not specify the piece of evidence which the petitioner company is required to produce. The petitioner company is under no legal obligation to collect the evidence for the complainant / respondent No. 2 and then to produce the same before the trial court. Assailing the 'witness summons' issued by the trial court, Ld. Counsel has submitted that the entire information sought to be produced by the company is totally irrelevant. Since under the Evidence Act only the relevant evidence can be led before the court, therefore, the petitioner company could not have been directed to produce the information / evidence which is mentioned in the list of documents / evidence, as mentioned in the summons issued to the petitioner company.

Having heard the Ld. Council for the petitioner and perused the court file; this court does not find any substance in the argument raised by Ld. Counsel for the petitioner. It is surprising that in the present petition, it is a summoned witness; who is challenging the 'witness summons' for avoiding its appearance as a witness before the court. This becomes more strange, particularly, when the petitioner company happens to be a Public Sector company, for whom the public interest and the interest of justice has to be supreme consideration; and not the case of either party to the litigation.

So far as the authority of the court to summon the petitioner company as a witness is concerned, this court does not find any deficiency in authority with the trial court in this regard. So far as the witnesses mentioned in the list of witnesses given by the complainant are concerned, since the complainant is to prove his case beyond reasonable doubt, therefore, the trial court is, rather, duty bound to summon all the witnesses as required by the complainant; unless otherwise prohibited by law or witness already stands expired or it is not feasible by virtue of space and time required to be consumed for ensuring the attendance of such a witness. In the event of last eventuality, even if the court is not summoning such a witness because of the constraints of time and space, then court is required to ensure the alternate evidence coming on the file.

Furthermore, the proceedings of the criminal complaint are governed by code of criminal procedure. To ensure that the trial court is able to do substantial justice in the case, Section 311 of Cr.P.C. has conferred ample powers upon the trial court to summon and examine any person as a witness. It would be appropriate to have a reference to the language of section 311 Cr.P.C. at this stage:-

> "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."

A bare perusal of this section shows that the trial court is authorized to examine any person as witness, even if he just happens to be in attendance of the court at the relevant time, but otherwise appears to the trial court to be acquainted with the facts of the case. Still further the mandate of the section is that in case the examination of a person as a witness is necessary for just decision of the case then the trial court shall order summoning of any person as a witness, even if he/it does not happen to have been mentioned as a witness in the list of witnesses furnished by the complainant. Hence this court finds that the trial court is fully authorized to summon the petitioner company as a witness. The present petitions, on behalf of the company, challenging the summons as a witness, are not even maintainable as such.

Coming to the arguments of the ld. Counsel for the petitioner, this court does not filed any force in the argument of the Counsel that the evidence called by the trial court; through the impugned summons; is indefinite or unspecified or that it is voluminous or requires creation of evidence by the petitioner company. The petitioner is a statutory company. Therefore it is required to act only through proper resolutions, decisions, orders, authorizations and the standard operational procedures. All the information called by the trial court is a matter of some document or the other of the petitioner company. The information called by the trial court are the resolutions, letters of authorization, the extracts of log-books, the approvals, the bill and the letters for payments or the other documents, which are supposed to be in existence with the petitioner company. Therefore the said evidence can very well be produced before the trial court by producing the concerned letters, documents of approvals and payments and some of the noting files, of course subject to the claim of privileged communication; which is also to be considered only by the trial court. Still further the trial court had specifically mentioned vide the note appended to the summons; that in case some of the evidence is not available with the petitioner company then a certificate of this effect should be produced before the court from the competent authority. Therefore, by any means, no cause of complaint is left with the petitioner company; unless it wants to avoid showing such documents to the trial court. The insistence of the petitioner company seems to be more on avoiding the appearance in the witness box at all and less with the lack of the documents on record. Therefore this argument of the counsel for the petitioner is liable to be noticed only to be rejected.

Next argument of the ld. Counsel for the petitioner is that the evidence called by the trial court is not relevant for the purpose of the trial. However, this court finds even this argument to be an exercise in futility, designed to a avoid showing the documents to the trial court. The relevance of the evidence is to be seen by the trial court at the time when the evidence is actually led before it. Raising this argument by a witness amounts to putting the cart before the horse. Unless the documents called by the trial court are produced before that court, the argument on relevance of the documents is totally premature. Needless to say that it is the contents of the document which are to be assessed qua relevance and not the perception of the petitioner company. Hence the petitioner company cannot refuse to produce the evidence before the trial court on the ground that the same is not relevant for the purpose of the case.

Although counsel for the petitioner has submitted that the complainant / respondent No. 2 is a habitual litigant and he has filed several litigations, therefore, the petitioner company could not have been asked to produce the evidence in a complaint filed by him, however, this court find this argument to be totally superfluous. A litigant being habitual and filing multiple litigation is one aspect, for which he may have to face certain consequences, in accordance with law, however, the complainant filed by such a person cannot be thrown away only on this ground. The same has to be proceeded with in accordance with law and has to be taken to be logical end as well. Since the trial court has undertaken the proceedings of the complaint filed by the complainant/respondent No.2, therefore, the petitioner company cannot say, by any means, that it should not be asked to produce the evidence, only because the complainant happens to be a habitual litigant. Still further, the petitioner company also does not appear to be free from vice of resorting to multiple litigations, in collaboration or in collusion with the respondent No.3. It has come on record that the respondent No.3 or the petitioner company has also filed several litigations, against the respondent No. 2/complainant. In one of such proceedings the complainant/respondent No. 2 has even been convicted by the trial court, despite the fact that the said criminal complaint was filed on behalf of the petitioner company through respondent No.3 and the trial court could not even record a finding that the respondent No. 3 was duly authorized to file the said complaint.

Lastly, the ld. Counsel for the petitioner has submitted that since in several of the proceedings initiated by the respondent No.2/ complainant, this court has already stayed the further proceedings before the trial court; therefore, the summons issued by the trial court in the present case deserves to be quashed. However this argument of the ld. Counsel for the petitioner is also totally irrelevant. First of all; there is nothing on the record of the present petition that proceedings of the present complaint going on before the trial court has also been stayed by this court. Secondly, even if it is taken that there is a stay from the High Court qua the proceedings pending before the trial court; still, the summons issued by the trial court cannot be quashed on this ground. For the purpose of validity of the 'witness summons' issued by the trial court, pendency of the complaint itself is sufficient. Maybe; the trial court is not able to proceed further at this stage because of some order from the higher court, however, if ultimately, that stay order is vacated or the proceedings are upheld by the higher court, then the complaint would be required to be proceeded further in accordance with law. Hence, so long as any higher court does not quashes or finally terminates the proceeding of the complaint itself, the issuance of the 'witness summons' by the trial court is bound to remain intact.

No further argument was raised by the ld. Counsel for the petitioner.

In view of the above, finding no merits in the present petitions, the same are dismissed.

September 09, 2019 **(RAJBIR SEHRAWAT)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No