

**In the High Court for the State of Punjab and Haryana
At Chandigarh**

CRM-M-45937-2018 (O&M)

Date of Decision:-7.1.2019

M/s Hi-Tech Power Systems and another ... Petitioners

Versus

M/s Amtek Sales & Service ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Naveen Chopra, Advocate for the petitioners.

Mr. A.S. Narang, Advocate for the respondent.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioners/accused assail order dated 6.10.2018 passed by learned Judicial Magistrate 1st Class, Chandigarh, whereby an application filed by the petitioners/accused under Section 311 Cr.P.C. for recalling CW-1 D.K. Verma for further cross-examination, has been dismissed.

The learned counsel for the petitioners has submitted that the counsel earlier engaged by the petitioners could not effectively cross-examine the complainant and overlooked material facts inasmuch as the documents Annexures P-6 to P-9 (Ex.C-6 to Ex.C-9), which are in the nature of invoices infact neither bear any signatures of the receiver acknowledging receipt of the goods in question nor bear the registration number of vehicle through which the goods were transported.

The learned counsel for the petitioners has further submitted that the material document relied upon by the complainant i.e. purchase

order dated 27.8.2012 (Annexure P-4) exhibited as Ex.C-4 before trial Court is incomplete inasmuch as only 3 out of 7 pages of the said purchase order were exhibited before the trial Court, whereas the remaining pages were not exhibited, which contain special terms and conditions including a condition to the effect that the delivery had to be made within stipulated period, which was infact not made. The learned counsel in this context has drawn the attention of this Court to Annexure P-5, which is stated to be the complete purchase order. It has been submitted that the said flaws had been pointed by the counsel engaged by petitioners subsequently and thereafter an application under Section 311 Cr.P.C. was moved which has been declined vide impugned order.

On the other hand, the learned counsel representing the respondent/complainant has submitted that since the witness in question had been cross-examined at length, no ground for recalling the said witness is made out and that the application had been moved simply to delay the trial as the matter is presently at the stage of recording of statements under Section 313 Cr.P.C. of the accused and has been pending since the year 2014.

Having considered rival submissions addressed before this Court, this Court is of the opinion that mere change of counsel ordinarily would not justify recalling of a witness more particularly when such witness has already been cross-examined at length. However, I do find that the complainant ought to have placed on record the complete purchase order since the purchase order contains certain terms and conditions, which could have a material bearing on the question of legal liability.

In view of the discussion made above, the impugned order dated 6.10.2018 passed by learned Judicial Magistrate 1st Class, Chandigarh is hereby set aside. The application filed on behalf of the petitioners/accused is accepted to the limited extent that CW-1 D.K. Verma is ordered to be recalled for further cross-examination on the limited aspect of confronting the witness with the complete purchase order (Annexure P-5).

Needless to mention, the witness would be at liberty either to admit or to deny the same.

The present petition stands accepted to the limited extent as indicated above.

Since, the matter has been pending in the trial Court since the year 2014, the learned trial Court shall ensure that the necessary exercise pertaining to recalling of the witness is conducted expeditiously and the matter is not unnecessarily delayed.

It is further clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

7.1.2019

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No