IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-4405-2020 (O&M)
Date of Decision : 31.01.2020

M/s Tyre Sales and another ...... Petitioners

Versus

M/s Shree Krishna Enterprises ...... Respondent

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

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Present : Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

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RAMENDRA JAIN, J. (Oral)

Through this petition under Section 482 Cr.P.C., petitioners have assailed order dated 18.12.2019 (Annexure P-1) of the Appellate Court, whereby their two applications under Sections 391 Cr.P.C. for production of additional evidence, were dismissed.

Briefly, in a complaint, filed by respondent under Section138 of the Negotiable Instruments Act (in short 'the Act') against petitioners, the petitioners were afforded full opportunities to lead evidence to their satisfaction. They examined two witnesses in defence. Thereafter, they voluntarily closed their defence evidence.

Learned trial court, after hearing both the sides, accepting the complaint of respondent, held petitioner No.2 guilty under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for two years under Section 138 of the Act and to pay total cheque amount i.e. Rs.19,00,000/- with interest @ 9% per annum from the date of cheque till realization vide judgment of conviction and order of sentence dated 22.12.2017.

Being aggrieved, petitioners filed appeal alongwith application under Section 391 Cr.P.C. to prove statements of accounts and books of accounts. Subsequently, petitioners moved another application under Section 391 Cr.P.C. to prove stock register and books of account.

The Appellate court, after hearing both the parties, dismissed both the applications vide impugned order dated 18.12.2019.

Learned counsel for petitioners, relying upon the judgments of Hon'ble Supreme Court in ***State of Gujarat vs. Mohanlal Jitamalji Porwal and another 1987 (2) SCC 364, Brig.Sukhjeet Singh (Retd.) MVC vs. The State of Uttar Pradesh & Ors. 2019 (1) RCR (Criminal) 895 and of this Court in Balbir Singh and another vs. Kulwant Singh and another 2019 (2) RCR (Criminal) 731***, contends that Appellate Court in the impugned order was required to give any specific finding as to whether the additional evidence sought to be produced by appellant was necessary for effective adjudication of the case. Since, no such finding has been recorded by the appellate court, therefore, the impugned order is liable to be set aside.

Having given thoughtful consideration to the above submissions, this court finds the instant petition merits dismissal for the reasons to follow.

For ready reference, the relevant portion of the impugned order is reproduced hereunder:-

> "A perusal of trial court file shows that complainant/respondent filed complaint under Section 138 Negotiable Instruments Act against the accused, due to dishonouring of cheque dated 19.08.2014 of Rs.19 Lacs. Accused examined two witnesses in defence evidence and availed a number of opportunities. Vide judgment dated 22.12.2017, learned JMIC, Jalandhar acquitted accused Amarjit Singh but convicted accused Inderpreet Singh and sentenced him to undergo RI for two years and to pay compensation of Rs.19 Lacs alongwith interest @ 9% per annum from the date of cheque till decision. Accused/appellant preferred present appeal. Alongwith the appeal, first application under Section 391 Cr.P.C. was moved, seeking permission to examine the accountant and to prove statements of accounts, bills, books of accounts and Income tax returns. It was contended that the necessity to prove these documents has been felt only because the learned trial court has held that the accused have failed to prove statements of accounts as well as the books of account. Thereafter second application was filed seeking permission to examine the accountant and to prove stock register and books of account. It was claimed that the same could not be produced at the appropriate time as these were lying with the accountant, with whom there was dispute and that the firm has also shifted from Shastri Market to some other place. The explanation furnished by the applicants for non-production of account books and other record in the trial court is hardly convincing. It was never claimed before the trial court that account books etc. are to be produced but as the same are lying with the accountant, with whom the firm has some dispute, so the same cannot be produced. In

that event, summons of such accountant could be obtained from the court, so as to seek his presence in the court alongwith account books. Name of such accountant has not even otherwise been given, even in this application. Furthermore, in Ist application, permission was sought, to examine the accountant and it was never claimed that there was dispute with him earlier. Accused firm had shifted from Shastri Market to which place has not at all been disclosed. Moreover Income tax returns could easily be produced by summoning the record from Income Tax department. There is no acceptable explanation for non-production of the record, which is sought to be produced now by way of additional evidence. Allowing of the applications will cause prejudice to the complainant as it will amount to re-trial of the case. Moreover, applicants had fair opportunity to lead this evidence but did not avail the same. Argument of learned counsel for the complainant that forged and manipulated record like stock register, account books, bills etc. is likely to be produced now, otherwise it would have been produced in the trial court, cannot be brushed aside lightly."

Learned counsel for the petitioners has not been able to belie or refute any of the above observation made by Appellate Court in the impugned order. Thus, it is apparent that the reasons spelled out by the Lower Appellate court for dismisisng the application of the petitioner for additional evidence are based on correct appreciation of facts and circumstances. Thus, impugned order needs no interference for the reasons to follow.

The story introduced by the petitioners before Lower Appellate court to permit them to lead additional evidence that the account books sought to be produced, could not be produced earlier, as the same were in custody of their ex-accountant with whom they had some dispute, is completely false, inasmuch as had it been so, the petitioners could easily prove the same by summoning the account alongwith account books of the petitioner through court .

The petitioners even did not ever disclose the name of their said ex-accountant. Thus, above story purtforth by them, on the face of it, is completely false and concocted from this angle too.

Prior to moving applications for additional evidence, the petitioners never claimed, alleged or pleaded that they were unable to produce their account books or statement of account earlier on account of their dispute with their Accountant.

Income tax return sought to be produced in additional evidence could also be proved during trial by summoning the record from the Income Tax Department. Non-adopting such exercise by the petitioners during trial requires to draw an adverse inference against them that they never intended to produce their income tax returns during trial.

The petitioners did not annex any proof with their applications for additional evidence as to where and when they had shifted their work place from Shastri Market and in which year. Thus, in the absence of any such proof, plea of the petitioners qua shifting of their office is also apparently false and concocted.

It is apparent that petitioners moved two successive applications to lead additional evidence to fill up lacuna in their case and to wriggle out of the finding of the trial court that petitioners did not prove their statement of accounts and books of accounts in support of their defence, while convicting them. The same is not permissible in law.

Lower Appellate Court has observed in the impugned order that permitting the petitioners to lead additional evidence would tantamount to retrial of the case which would definitely prejudice the rights of the respondent-complainant. This court is in complete agreement with the same, considering the observation of the Lower Appellate Court that there is every possibility of production of forged and fabricated record by the petitioners.

In view of discussion made above, revision, being devoid of any merit, is dismissed.

(RAMENDRA JAIN)
JUDGE

31.01.2020
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No