IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2914-2016
Date of decision:-4.3.2020

Taneja Tyres Shed
...Petitioner

Versus

Birla Tyres Proprietor Kerosam Industries Ltd.
...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Arun Singal, Advocate
for the petitioner.

Mr.Anirudh Nanda, Advocate for
Mr.J.K. Goel, Advocate
for the respondent.

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H.S. MADAAN, J.

Briefly stated, the facts of the case are that complainant Birla Tyres Proprietor Kerosam Industries Ltd., Kolkata had brought a complaint under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as *the Act*) against accused Taneja Tyres Shed, Delhi Road, Sonepat and its Proprietor R.K. Taneja on the allegations that M/s Aggarwal Tyre Agency is sales agent/marketing agent of complainant and is dealing in the business of sale and purchase of the tyres, tubes and flaps etc.; the accused concern is also dealing in the business transactions with M/s Aggarwal Tyre Agency inasmuch as accused had been purchasing tyres and tubes etc. from M/s Aggarwal Tyre

Agency at times in cash and sometimes on credit basis; there was an outstanding amount against the accused and to discharge that financial liability, the accused had issued a cheque bearing No.540612 dated 4.7.2011 in the sum of Rs.1,25,018/- in favour of the complainant; the complainant presented the cheque to its banker, which in turn forwarded it to the banker of the accused, but the cheque was returned uncashed with the endorsement 'payment stopped by drawer' vide memo dated 5.7.2011; on contact, the accused did not make the payment of amount of cheque; thereafter, the complainant sent a notice dated 12.7.2011 to the accused calling upon him to make the payment of the cheque amount within 15 days of receipt of notice but to no effect. As such, the complainant has filed a complaint in question in the Court of Judicial Magistrate Ist Class, Panipat.

After recording preliminary evidence, the accused was summoned. Accused put in appearance and was admitted to bail. Notice of accusation under Section 138 of the Act was served upon him, to which, he pleaded not guilty and claimed trial. The trial in the case was proceeded. On conclusion of the trial vide judgment dated 15.5.2014 passed by learned Judicial Magistrate Ist Class, Panipat, accused R.K. Taneja, Proprietor of the accused No.1 concern was convicted and vide order of the same date, he was sentenced to undergo rigorous imprisonment for a period of one year and six months and to pay a compensation of Rs.1,50,000/- to the complainant.

Feeling aggrieved, the accused challenged judgment of his conviction and sentence order by way of filing appeal in the Court of

Sessions, notice thereof was given to the complainant, which put in appearance.

During the pendency of the appeal, the appellant has filed an application under Section 311 Cr.P.C. read with Section 391 Cr.P.C. contending that document Ex.C7 was tendered by respondent/complainant as account statement of the company but the statement was signed by the Attorney of the company, who was not authorized for that purpose; that the power of attorney of the respondent/complainant during his cross-examination stated that he had signed Ex.C1 being a Proprietor; that learned trial Magistrate had relied upon such document, which is fabricated. Therefore, the appellant wanted to summon the Managing Director of the company along with income tax return, balance sheets and account statement from 1.4.2011 till date relating to M/s Birla Tyres, Kolkata..

That application was resisted by the complainant/respondent. Vide order dated 12.5.2016, the said application was dismissed by learned Additional Sessions Judge, Panipat. The reasons for dismissal of the application are recorded in para No.6 of the order, which for ready reference is being reproduced as under:

> *6. There was business transactions between the appellant-applicant and M/s Aggarwal Tyre Agency on behalf of the respondent-complainant M/s Birla Tyres. Raj Kumar Aggarwal, Proprietor of M/s Aggarwal Tyre Agency appeared in the witness box as PW1 before learned Trial Court. He has stated in his cross-examination that he signed*

Ex.C7 in the capacity of Proprietor. Ex.C7 is the computer generated document. The appellant-applicant also suggested PW1 Raj Kumar Aggarwal that Ex.C7 is a forged document. He has admitted the transaction between the complainant and the accused. Thus, during the course of evidence, the appellant-applicant was of the opinion that document Ex.C7 is a forged document. He was having ample opportunity to lead evidence to prove that document Ex.C7 to be forged. The transaction was made with the appellant-applicant by M/s Aggarwal Tyres on behalf of M/s Birla Tyres. Therefore, there is no justification in calling Managing Director of M/s Birla Tyres along with the account books and the income tax returns etc. The present application is nothing but a tool to prolong the litigation and delay the decision of the case. Such type of practice is required to be deprecated. Thus, finding no merit in the application in hand, the same stands dismissed.

Feeling aggrieved by the said order, the accused/petitioner has approached this Court by way of filing a revision petition, which is being resisted by complainant/respondent.

I have heard learned counsel for the parties besides going through the record.

The impugned order passed by learned Additional Sessions Judge, Panipat is well reasoned, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Rather it comes out that the application has been filed by the appellant as a delaying tactic. The application in question does not fall within four corners of Section 311 or 391 Cr.P.C. and had rightly declined by learned Additional Sessions Judge, Panipat.

Even otherwise, law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no interference with such judgment is to be done.

I do not find the impugned order to be perverse, arbitrary or against the settled provisions of law. There is no defect therein much less apparent on the face of it.

Finding no merits in the revision petition, the same stands dismissed.

However, it is observed that by way of filing the present revision petition revisionist has successfully stalled the proceedings for more than 3 ½ years. Therefore, the First Appellate Court is directed to dispose of the appeal expeditiously preferrably within a period of two months from the date of receipt of copy of this order.

4.3.2020 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No