

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114)

CRR no.1441 of 2021

Date of Decision: 17.11.2021

Ram Murti

...Petitioner

Versus

Goldy Sharma

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Vishal Goel, Advocate, for the petitioner.

Amol Rattan Singh, J. (Oral)

By this revision petition, the petitioner assails the order dated 11.11.2021 passed by the Addl. Sessions Judge, Patiala, whereby his application seeking the remand of his case to the trial court, has been dismissed.

Learned counsel for the petitioner first points to the order passed by this court (this very Bench) on 10.11.2021 (one week ago), in CRR no.1409 of 2021, also filed by the petitioner, with the same respondent arrayed as such.

The relevant operative part of the said order is reproduced as follows:-

“Having considered the matter, this petition is disposed of with a direction to the learned appellate court to first examine the cross-examination of the complainant and determine as to whether, on the basis of that cross-examination alone, the matter needs to be remanded for *de novo* hearing before the trial court or not.

Naturally, an appropriate order in that regard would be passed by that court.

It is made clear that this court has not made any comment whatsoever on the actual merits of what has been contended.

It is to be noticed that it is 2.45 p.m. at the time when this order has been passed and therefore, if the appeal has already been decided by the appellate court today, naturally this order will have been rendered infructuous.”

Thereafter, the impugned order has been passed by the learned Addl. Sessions Judge, Patiala, on 11.11.2021, paragraph 5 of which specifically needs to be referred to by this court as follows:-

“5. The instant appeal has been filed by the accused having felt aggrieved from the impugned judgment dated 22.10.2018 passed by the learned trial court whereby accused/applicant has been convicted and sentenced for commission of offence falling under Section 138 of the Negotiable Instruments Act having failed to discharge his liability qua cheque dated 24.09.2015. Although the instant appeal has been instituted on 22.10.2018, whereas the instant application has been filed at the fag end of the appeal on 24.08.2021 at the stage when it was listed for arguments. During the intervening period at any stage of the appeal the appellant did not raise any such plea alleging that the cross-examination of complainant has not been appreciated in the impugned judgment seeking its remand.”

Hence, having considered the matter, obviously the application was filed before the appellate court almost three years after the appeal was instituted by the petitioner before that court, and therefore the application seems only to be a delaying tactic, with the appeal itself at the stage of arguments.

Therefore, the appellate court was absolutely correct in dismissing the application, because while considering the appeal itself, naturally any argument raised by the petitioner as regards non consideration of the cross-examination of any witness by the trial court, would be duly considered by the appellate court.

Consequently, without making any comment on the merits of the appeal before that court, as regards the impugned order passed in application filed by the petitioner under the provisions of Section 386 of the Cr.P.C., this petition is dismissed in *limine*.

It is to be observed by this court that on the date that the order dated 10.11.2021 was passed by me, I had wholly missed the fact that the aforesaid application filed by the petitioner before the appellate court was so filed almost three years after he had instituted the appeal before that court.

17.11.2021
vcgarg

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: No