246 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:043844

CRM-M-6028 of 2020

Date of Decision: March 21, 2023

Inderjit Kaur …Petitioner

Versus

Amarjit Singh …Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Damanjit Singh Sandhu, Advocate for the petitioner.

Mr. Gurcharan Dass, Advocate for the respondent.

DEEPAK GUPTA, J.(Oral)

Prayer in this petition under Section 482 Cr.P.C. is to set aside the order dated 16.01.2020 (Annexure P-4) passed by learned Addl. Sessions Judge, Ludhiana in CRA-2734-2019, whereby applications under Section 311 Cr.P.C. and 391 Cr.P.C. for summoning a witness in additional evidence, have been dismissed.

2. It is revealed that in complaint case titled as ***"Amarjit Proprietor M/s D.R. Enterprises v Inderjit Kaur Proprietor of M/s Sandeep Knitwears and another"*** (CNR No.PBLD03-041927-2017) filed by the respondent, accused-Inderjit Kaur (present petitioner) was convicted by the Court of learned Judicial Magistrate 1st Class, Ludhiana, vide judgment dated 04.09.2019 under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to undergo rigorous imprisonment for a period of 2 years besides paying compensation of ₹1,50,000/- to the complainant.

3. Against the aforesaid judgment of conviction and order of sentence, appeal filed by the petitioner is pending before learned Addl. Sessions Judge, Ludhiana, where petitioner moved an application under Section 311 Cr.P.C. submitting that complainant had shown a bill dated 26.06.2017 in the GST return, though the GST number was issued to her

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in July, 2017 and thus cheating was done. Petitioner-accused prayed for summoning the record as well as official of the GST Department, so as to consider this point. Before this application could be disposed of, petitioner moved another application under Section 391 Cr.P.C. with the similar prayer but also submitting that before the Trial Court, he could not inadvertently produce the document with regard to the GST returns nor could cross-examine the complainant in this regard.

4. Both the above applications were dismissed by learned Addl. Sessions Judge, Ludhiana, vide impugned order dated 16.01.2020, against which this revision has been filed.

5. It is contended that parties had business transactions. Cheque in question was issued as a security cheque. Application under Section 311 Cr.P.C. as well as under Section 391 Cr.P.C. have been wrongly dismissed. Learned counsel for the petitioner further submits that petitioner be granted one opportunity to put forth his defence by examining the official of GST Department.

6. Perusal of the impugned order reveals that even before the Trial Court, petitioner had moved a similar application, which was dismissed on 10.10.2018. It was specifically noticed in the impugned order that when the complainant entered the witness box, he was not confronted with any document pertaining to GST. Once it was found that the document, which the petitioner wants to get proved through GST official, was not even confronted to the complainant, no case is made out to summon the concerned official of the GST Department.

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7. Counsel for the petitioner submits that petitioner wants to avail her right under Sections 311 and 391 Cr.P.C. There is no merit in the contention. Application under Section 311 Cr.P.C. is not maintainable before the Appellate Court.

8. As far as application under Section 391 Cr.P.C. is concerned, the Appellate Court has the power to take additional evidence only if it thinks the same to be necessary. In the present case, in the impugned order, it is specifically noticed that similar application was dismissed by the Trial Court and complainant was not confronted regarding the document in question as has been noticed above.

In view of above, this Court finds no illegality or infirmity in the impugned order. As such, the present petition is dismissed.

March 21, 2023 **(DEEPAK GUPTA)**
sarita **JUDGE**

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No

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