

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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I. CRM-M-7869-2023 (O&M)
Date of decision: 15.03.2023

COMMANDO CATERERS PVT. LTD.

....Petitioner(s)

Versus

SKY HIGH DINNER LLP (SHD) AND OTHERS

...Respondent(s)

II. CRM-M-7895-2023 (O&M)

COMMANDO CATERERS PVT. LTD.

....Petitioner(s)

Versus

SKY HIGH DINNER LLP (SHD) AND OTHERS

...Respondent(s)

III. CRM-M-7898-2023 (O&M)

COMMANDO CATERERS PVT. LTD.

....Petitioner(s)

Versus

SKY HIGH DINNER LLP (SHD) AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Gurmohan Singh Bedi, Advocate for the petitioner(s).

AMAN CHAUDHARY. J.

This common order shall dispose of the above-mentioned three criminal miscellaneous petitions as the dispute is between the same parties.

Present petitions have been filed for setting aside the impugned order dated 31.01.2023, Annexure P-16 in NACT-Complaint No.7269, 7980 and 7993 of 2016, dated 17/18/10.2016 titled as 'Commando Caterers Pvt.

Ltd. Vs. Sky High Dinner LLP (SHD) and others' pending before the court of learned JMIC, Chandigarh.

Learned counsel for the petitioner contends that the learned trial Court has closed the documentary evidence of the complainant-petitioner by not properly appreciating that it is not the petitioner, who had delayed the trial but as notice of accusation was served upon the accused A-1, B-1, C/2-A on 31.7.2018, while remaining accused were declared proclaimed offenders vide order dated 20.07.2018. Thereafter, on appearance of accused No.2(D), fresh notice of accusation was jointly served on all accused again on 16.07.2021. It is next contended that the cross-examination of the complainant-petitioner lasted for more than 4 years, from 22.01.2019 till 07.09.2022, during which period more than 220 documents have been exhibited by the accused. In order to produce documentary evidence, the petitioner had taken 5 dates i.e. beginning 26.09.2022 till 07.11.2022, whereafter on 25.11.2022, an application for exemption was filed on the ground that the complainant-petitioner had to travel to Mumbai for collecting certified copies of documents to be produced, the air tickets were also appended with the application. On the next date of hearing i.e. 06.01.2023, the complainant-petitioner moved yet another application for adjournment on the ground for enabling him to place on record documents in support of his evidence, which was allowed on payment of costs, which were deposited as noticed in order dated 31.01.2023, when the documentary evidence was closed, on the ground that since notice of accusation was framed more than one and a half year ago and number of opportunities have been granted. He further submits that the

opportunities were granted but for one or the other reason, including abstinence of lawyers before the trial Court, which is so stated in para 15 of the application dated 06.01.2023, Annexure P-13. He thus, prays for grant of only one effective opportunity to produce the documentary evidence whatever is available at this moment, which may even be subject to costs.

Despite service none appears for the respondents.

Heard and perused the case file.

It would be apposite to make a reference to the order 31.01.2023, passed by the learned trial Court, which reads thus:

“Previous cost deposited and paid. The case was fixed for documentary evidence of the complainant. Counsel for the complainant moved an application for adjourning the case by the end of February, 2023. It is mentioned in the application that the documents which the complainant wanted to produce are vital and crucial for the outcome of this case on merits. Complainant has a very high stake involved in the matter against the accused persons. Perusal of the file transpires that similar application was also filed on the same grounds. Counsel for the complainant argued that the said documents are in Marathi language and the complainant has gone to Mumbai to collect the said documents, Air tickets are also attached with the application. Perusal of the file transpires that notice of accusation had already been framed on 16.07.2021 i.e. a period of more than one year and half years back. since then number of opportunities had already been granted to complainant lead complainant evidence. It is pertinent to mention here that complainant had already closed his documentary evidence on 07.09.2022 i.e. almost 4 months back, till then case is lingering on placing on record documentary evidence of complainant. Since the present case belongs to the year, 2016 i.e. a period of more than 6 years has passed. As this case also falls in the category of Action Plan Cases, I do not find any merit in present application, hence, application-in hand stands allowed accordingly. Documentary evidence of complainant stands closed by order. Case is adjourned to 15.02.2023 for recording

statement of the accused persons under Section 313 of Cr.P.C.”

The trial Court has closed the documentary evidence of the complainant-petitioner, observing that the case relates to the year 2016, however, as has been stated by the learned counsel for the petitioner, that the cross-examination of the complainant-petitioner itself continued for more than 4 years, having commenced on 22.01.2019, till 07.09.2022. The documents as sought to be produced were to be obtained from various authorities in Mumbai, whose jurisdiction had been invoked by the accused-respondent against the complainant- petitioner through RTI applications and certified copies of orders from the Courts, for which best efforts were made by the petitioner as reflected in the application and even the learned trial Court has noticed the fact of the petitioner having air tickets to Mumbai to get the documents which were in Marathi language. The order of the trial Court though notices that the application dated 31.1.2023, filed was to defer the hearing of the case till end of February, 2023 to enable him to place on record documents which were stated to be vital and crucial for the just decision of the case. A perusal of the order further reveals that the Court was in the know of the applicant making strenuous efforts to produce the documents, a conditional last opportunity could have been granted in the interest of justice.

No party in a trial can be foreclosed if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence also and the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is

administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better and “The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone”, were the observations of Hon’ble The Supreme Court of India in the case of **Rajendra Prasad vs. Narcotic Cell** (1999) 6 SCC 110. Further that the object underlying, is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side, the determinative factor is whether it is essential to the just decision of the case as held by Hon’ble The Supreme Court of India in the case of **Iddar and another vs. Aabbida and another** (2007) 11 SCC 211.

The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act but only to subserve the cause of justice. It is done with an object of getting the evidence in aid of a just decision. In **Mohan Lal Shamji Soni vs. Union of India**, 1991 Supp (1) SCC 271, it was held by Hon’ble The Supreme Court that even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guides and that only the requirements of justice command.

The Courts have to take a participatory role in a trial. The Code confers vast and wide powers on the Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to

monitor the proceedings in aid of justice. Even if there is a remiss in some ways, it can control the proceedings effectively, the ultimate objective being that truth is arrived at.

Considering the peculiarity of facts and circumstances of the case in light of the judgments referred to hereinabove, this Court finds that the ends of justice would be met by granting one opportunity to the complainant-petitioner to lead his entire documentary evidence, which shall be subject to costs of Rs.50,000/- to be paid to the respondent.

The present petitions stand disposed of accordingly.

Photocopy of the judgment be placed on the files of the connected cases.

(AMAN CHAUDHARY)
JUDGE

March 15, 2023
S.Sharma(syr)

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