

266 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 03.10.2023
Pronounced on : 10.10.2023

CRM-M-18430-2014

M/s Desire Clothing and another

..... Petitioner

Versus

Nahar Industrial Enterprises Ltd.

..... Respondent

CRM-M-22730-2016

M/s Desire Clothing and another

..... Petitioner

Versus

Nahar Industrial Enterprises Ltd.

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Parmeshwar Kr. Dixit, Petitioner in person.

Mr. Aalok Jagga Advocate with
Mr. Harkirat S. Jagdev, Advocate
for the respondent.

Manjari Nehru Kaul, J.

This order shall dispose of above-said two petitions as the issue involved in both the petitions is same and between the same parties. Brief facts of the case are being taken from CRM-M-18430-2014.

2. Prayer in the instant petition is for quashing of the impugned order dated 12.02.2013 (Annexure P-3) passed by JMIC, Ludhiana in complaint No.568/2 dated 16.03.2010 under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') whereby the Court allowed recording of

further evidence of the respondent-complainant, by rectifying its earlier order dated 02.05.2012 vide which the complainant had closed his evidence.

3. **Submissions of the petitioner**

The petitioner while challenging the impugned order submits that a complaint had been filed against him by respondent-complainant under Section 138 of the Act. After the evidence of CW-1 Ram Prakash Bhangu had been recorded, the matter was fixed for cross-examination of the said witness. Learned counsel appearing for him during trial sought an adjournment, however, his prayer was rejected by the learned trial court, and the cross-examination of CW-1 Ram Prakash Bhangu was treated as NIL, vide order dated 02.05.2012. On the same date i.e 02.05.2012, the complainant too closed his evidence.

The petitioner further contends that thereafter he approached this Court by filing revision petition i.e. CRR No.1552 of 2012 challenging the order dated 02.05.2012 passed by the learned trial court whereby the cross-examination of CW-1 Ram Prakash Bhangu was treated as NIL. Vide order dated 23.08.2012 (Annexure P-2), this Court after considering all the contentions as well as relevant material on record, granted another opportunity to the petitioner to cross-examine CW-1 Ram Prakash Bhangu, subject to payment of costs. Pursuant to the order passed by this Court on 23.08.2012, the trial Court allowed the petitioner to cross-examine the complainant's witness and the matter was thereafter posted for recording of the statement of petitioner under Section 313 Cr.PC. Thereafter, despite the matter being posted for recording of statement of accused-petitioner under Section 313 Cr.PC, learned trial Court by misinterpreting the order of this Court dated 23.08.2012

(Annexure P-2) erroneously rectified its own order dated 02.05.2012 and reopened the evidence of the complainant. The matter was then posted for recording of remaining evidence of the complainant. Aggrieved by this order, the petitioner yet again approached this Court by filing CRM-46610-2013 in CRR-1552-2012 for seeking clarification of the order dated 23.08.2012.

The petitioner has vehemently argued that the impugned order suffers from a gross-misunderstanding of the order of this Court dated 23.08.2012 wherein it had been made amply clear that this Court had intended to set aside the order dated 02.05.2012 passed by the Court below only to the extent of cross-examination of CW-1 Ram Prakash Bhangu being treated as NIL. The trial court had committed a grave illegality by reopening the complainant's evidence vide impugned order. It has been further submitted that the order dated 14.11.2013, which is an order of clarification of the order of this Court dated 23.08.2012, further reveals that the orders dated 02.05.2012 were never set aside so as to reopen the entire evidence of the complainant. It has been further argued that even though the petitioner approached the learned Sessions Judge, Ludhiana by way of a revision petition, however, the said Court also erroneously dismissed the revision petition on the ground of maintainability as well as by erroneously observing that the trial court had allowed further evidence as it was necessary for the just decision of the case.

In support of his submissions, petitioner has placed reliance upon the judgments of Hon'ble Supreme Court in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) RCR (Crl.) 726, Adalat Prasad vs. Rooplal Jindal, 2004(4) RCR (Crl.) 1*** and ***Bindeshwari Prasad Singh vs. Kali Singh, 1977 AIR***

(*Supreme Court*) 2432 and of the Coordinate Bench of this Court in *Hari Singh vs. State of Haryana, 2002 (2) RCR (Crl.) 316*.

4. **Submissions made on behalf of the respondent:**

Per contra, learned counsel for the respondent while opposing the prayer and submissions made by the petitioner has vehemently argued that the evidence of the respondent was closed vide order dated 02.05.2012 (Annexure P-1) i.e. by the same order vide which the petitioner's opportunity of cross-examination was treated as NIL, therefore, once the order dated 02.05.2012 was set aside by this Court vide order dated 23.08.2012, the evidence of the complainant had to be treated as open as a natural corollary thereof. It has been further urged that the order dated 23.08.2012 was completely silent and did not say that the order dated 02.05.2012 (Annexure P-1) was being set aside only to a limited extent of giving the petitioner an opportunity to cross-examine, rather the entire order had been set aside. Learned counsel has still further asserted that even otherwise the trial court has ample powers to allow adducing of additional evidence under Section 311 Cr.PC after the closure of the evidence of both the parties and the said power can be exercised by a Court even *suo moto*. Therefore, even if, for the sake of arguments, it is believed that the order dated 23.08.2012 did not permit reopening of the evidence of the complainant, still the trial court was perfectly justified and empowered in view of the powers vested in it under Section 311 Cr.PC. Furthermore, this Court vide order dated 14.11.2013 had also clarified that the impugned order dated 12.02.2013 passed by the trial court was a subsequent event in the exercise of its power to summon a

witness at any stage as it appeared to be essential for the just decision of this case. Therefore, the impugned order has been impliedly passed under Section 311 Cr.PC in accordance with law and thus, did not warrant any interference.

In support of his submissions, learned counsel for the respondent has placed reliance on the judgment of Hon'ble Supreme Court in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) RCR (Crl.) 726*** and of the Coordinate Bench of this Court in ***Jaspal Kaur vs. State of Punjab and others, 2016(1) RCR (Crl.) 163, Rajinder Singh Chadha vs. U.T., Chandigarh (CRR No.2490 of 2015) decided on 18.08.2015***, and Division Bench of this Court in ***Pranab Bishwas vs. State of Punjab, 2012(4) RCR (Crl.) 337***.

5. Heard learned counsel for the parties and perused the relevant material on record.

6. After the petitioner's opportunity to cross-examine the complainant witness was treated as NIL by the learned trial court, he approached this Court for granting him another opportunity to cross-examine the complainant witness. The petition filed by the petitioner was allowed by this Court vide order dated 23.08.2012 (Annexure P-2). While granting him an opportunity to cross-examine the complainant witness, this Court set aside the order dated 02.05.2012.

7. The controversy, therefore, before this Court is as to what extent the order dated 02.05.2012 (Annexure P-1) was set aside by this Court.

8. Before proceeding further, it would be apposite to notice the prayer made by the petitioner on the basis of which order dated 23.08.2012 was passed by this Court. The relevant extract of the said order is reproduced herein:

“Petitioner has questioned the legality and propriety of order dated 02.05.2012, passed by the Judicial Magistrate First Class, Ludhiana considering the cross-examination of CW-1 Ram Parkash Bhangu as “Nil” as the defence had failed to conduct the cross-examination.”

9. The petitioner had thus, raised concerns about the legality and appropriateness of the order dated 02.05.2012 passed by the learned trial court. This is due to the fact that CW-1 Ram Parkash Bhangu’s cross-examination was treated as NIL since the defendant did not carry out cross-examination upon him.

10. The clear implication from the above prayer is that the challenge to the order dated 02.05.2012 was limited to the extent of providing him an opportunity to cross-examine the complainant, and there was no dispute regarding the closure of the complainant’s evidence as per that order. Furthermore, in the order dated 14.11.2013 passed by this Court, it was explicitly stated that while deciding Criminal Revision No.1546 of 2012, only the concern of the accused-petitioner qua being denied the opportunity to cross-examine the complainant-witness Ram Parkash Bhangu, was taken into account. This was because the complainant had not approached this Court to set aside the order dated 02.05.2012, which led to the closure of evidence based on his statement.

11. This Court had clarified the order dated 23.08.2012 in the following terms:

“I have considered the facts and circumstances of the case and it is clarified that while deciding the criminal revision No.1546 of 2012, the grievance of the accused-petitioner in declining him an

opportunity to cross-examine the complainant-witness Ram Parkash Bhangu was considered as the complainant had not approached this Court for setting aside the order dated 02.05.2012 closing the evidence on the basis of his statement.”

12. The previous clarification along with the order dated 23.08.2012 unequivocally confirmed that the order dated 02.05.2012 was set aside by this Court solely to provide the petitioner a chance to cross-examine the complainant-witness. It did not affect any other aspect of the order, especially “the closing of the complainant’s evidence”. Thus, it is evident that the trial Court not only misinterpreted the order dated 23.08.2012 of this Court, but also erroneously proceeded to rectify its earlier order dated 02.05.2012. It must be borne in mind that a trial court has not been empowered either under the Code of Criminal Procedure or any other provisions of law to rectify or modify its own order except of course in some cases, where there has been a clerical or arithmetical error. This Court, therefore, concurs with the arguments raised by the petitioner that the trial Court misinterpreted this Court’s order dated 23.08.2012 and travelled beyond its jurisdiction by reopening the complainant’s evidence after *suo moto* modifying its order dated 02.05.2012.

13. The contention of the learned counsel for the respondent that the trial court had merely exercised its powers, *suo moto*, under Section 311 Cr.PC to allow additional evidence, is devoid of any merit. This Court finds no merit in the contentions of learned counsel for the respondent that the trial Court in all likelihood had inadvertently failed to mention that reopening of complainant’s evidence was for the just decision of the case. Merely because the trial court is empowered under Section 311 Cr.PC to allow a party to lead evidence at any

stage, it cannot be automatically presumed that the Court had in fact decided to exercise its powers under Section 311 Cr.PC while passing the impugned order. The application of judicial mind of the Court and its decision to exercise its powers under Section 311 Cr.PC must be reflected in or should be at least discernible from the language of the order. However, it is clear from a minute perusal of the impugned orders that the respondent's evidence was reopened only on account of the orders of this Court dated 23.08.2012 being grossly misinterpreted by the learned trial Court.

14. The evidence of the respondent, in the above facts and circumstances, shall be deemed to have been closed on 02.05.2012, except for the cross-examination permitted by this Court vide order dated 23.08.2012. It is clarified that any evidence tendered by the respondent, pursuant to the impugned orders, shall not be read into evidence.

15. Without commenting on the merits of the complaint filed under Section 138 of the Act, by the respondent, the present petition(s) stands allowed.

(MANJARI NEHRU KAUL)
JUDGE

10.10.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No