

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-1006-2019 (O&M)
Reserved on 04.07.2023
Pronounced on: 11.07.2023

Rajesh Maurya

.....Petitioner

Versus

Vivek Tyagi

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Shiv Kumar, Advocate
for the petitioner.

Mr. Bikram Chaudhary, Advocate
for the respondent.

MANJARI NEHRU KAUL, J.

1. The petitioner is impugning the order dated 20.03.2019 passed by learned Additional Sessions Judge, Faridabad vide which revision petition preferred by the respondent-complainant against the dismissal of his application under Section 311 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') was allowed and the latter was allowed to examine three witnesses by way of additional evidence in CIS No.NACT/5317/2015.

2. Brief facts necessary for the adjudication of this case are that the complaint in question was filed against the petitioner-accused (hereinafter referred to as 'accused') on the allegations that 7/8 years ago, the accused had gotten acquainted with the respondent-complainant (hereinafter referred to as 'complainant') since the latter was his counsel in a case. Thereafter, the accused and the complainant developed friendly relations with each other. The accused, being aware

of the fact that the complainant was owner of a property in village Bhondsi and was going to sell it induced him to invest in a diagnostic centre. The complainant gave a sum of ₹35 lakhs on 10.05.2014 in his chamber No.320 in the District Court Compound, Faridabad in the presence of two witnesses. The said amount had been received by the complainant after selling his property in village Bhondsi. Thereafter, the complainant was induced yet again to pay a sum of ₹50 lakhs for the installation of machines in the laboratory. After taking the abovementioned amount from the complainant, the accused started avoiding him. On being approached and asked, the accused assured the complainant that he would try to pay most of the amount in the month of December, 2014. On 05.12.2014, the accused issued two cheques drawn on ICICI Bank of Sector 15 Branch, Gurgaon dated 06.12.2014 in the sum of ₹23 lakhs and another cheque dated 22.12.2014 of ₹27 lakhs in discharge of his abovesaid liability. The complainant presented the abovesaid cheques for encashment which were dishonoured by the bank on the ground that the "Drawer's Signatures Differs". The complainant served a legal notice dated 08.01.2015 upon the accused calling him to make payment of the cheque amount within 15 days of receipt of the notice, but in vain. Consequently, a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') was instituted by the complainant and the accused was summoned to face trial.

3. During trial an application was filed by the complainant under Section 311 of the Cr.P.C. for examining three witnesses namely

S.P. Tyagi, Advocate, father of the complainant; clerk/cashier of ICICI Bank Branch of Sector 15, Gurugram and, the Assistant Record Keeper, Sub Registrar, Office Sohna. The said application was dismissed by the Trial Court on 17.04.2018 on the ground that numerous opportunities had been availed of by the complainant for producing evidence.

4. The complainant assailed the order passed by the Trial Court dated 17.04.2018 by way of a revision before the Revisional Court. The Revisional Court while allowing the revision held that the complainant could not be surprised by putting documents on record at the last stage of trial without the same having been put to him during his cross-examination.

5. Learned counsel for the accused *inter alia* contends that the impugned order suffers from patent illegality having been passed in gross violation of the settled principles of law.

6. It has been argued by the learned counsel for the accused that the application under Section 311 of the Cr.P.C. was moved by the complainant at a highly belated stage on 17.10.2018, when the case was fixed for arguments, which clearly indicated that it had been moved with the sole intent to prolong the trial.

7. Learned counsel for the accused has still further contended that the complainant by way of an application under Section 311 of the Cr.P.C. was trying to fill up lacunae in his case as he had failed to produce documents and also examine witnesses, which he was now wanting to summon by way of additional evidence, despite the fact that he was well aware of all these facts as also the defence which had been

taken by the accused.

8. Learned counsel for the accused has further submitted that a similar application under Section 311 of the Cr.P.C. was earlier also moved by the complainant which was dismissed by the Trial Court on 17.04.2018. The said order had since attained finality as it was never impugned before any higher Court.

9. Learned counsel for the accused has further argued that the learned Revisional Court had erroneously observed that the complainant could not be taken in for a surprise by placing some documents on record at the final stage of the trial. While drawing the attention of this Court to the reply (Annexure P-4) sent to the legal notice issued by the complainant (Annexure P-1) wherein the factum of the cheques having been lost and the registration of the FIR qua the said loss finds mentioned, and still further during his cross-examination, the complainant had not disputed the receipt of the aforesaid reply (Annexure P-4), it has been argued by the learned counsel for the accused that however, for reasons best known, rather obvious, the complainant had intentionally not mentioned about it either in his complaint or even when he was examined during trial.

10. It has thus been vehemently argued that it was obvious that the complainant had not approached the Court of law with clean hands and had intentionally concealed material facts. Thus, on this ground alone his revision ought to have been dismissed.

11. Per contra, learned counsel for the complainant while controverting the submissions made by the learned counsel opposite, contends that the reply to the legal notice (Annexure P-4) as well as the copy of the FIR/NCR (Annexure P-3) was placed on record during the

defence evidence by the accused, hence, the complainant could not have anticipated the production of these documents by the accused and hence, was unable to lead any evidence at an earlier stage qua the same. He further submits that the accused had got a false FIR registered qua the loss of his cheques with an ulterior motive to fabricate defence in his favour just in case any complaints were filed against him under Section 138 of the NI Act. Learned counsel has argued that in fact the accused had all along been in possession of the cheques which he issued to the complainant and various other people, therefore, to prove the said fact it became all the more essential to lead additional evidence in the said regard. He has further asserted that in order to prove the entire case of the complainant and to shatter the false plea raised by the accused, the complainant had sought to lead additional evidence as it would also enable the Trial Court to effectively adjudicate upon the dispute in question. Reliance in this regard has been placed by the learned counsel for the complainant on ***Varsha Garg Vs. The State of Madhya Pradesh and others : 2020 LiveLaw (SC) 662*** wherein it has been held by the Hon'ble Supreme Court that the broad powers under Section 311 of the Cr.P.C. are to be governed by the requirement of justice and the application cannot be dismissed merely on the ground that it will lead to filling up the lacunae of the prosecution's case.

12. I have heard learned counsel for the parties and perused the relevant material on record.

13. At the outset, it would be pertinent to point out here that the order of the Trial Court declining to summon additional witnesses while rejecting the application under Section 311 of the Cr.P.C. was an

interlocutory order. Therefore, in view of the statutory bar under Section 397(2) of the Cr.P.C., revision was not maintainable before the learned Revisional Court against the order of the dismissal dated 01.12.2018 passed by the learned Trial Court.

14. The Hon'ble Supreme Court while dealing with a similar controversy in ***Sethuraman Vs. Rajamanickam : 2010(5) RCR (Criminal) 512***, has held as under:-

“4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

15. In view of the aforesaid position of law, it is clear that the learned Revisional Court erred in exceeding its jurisdiction and entertaining the revision petition preferred by the complainant. Hence, on this ground alone the impugned order deserves to be set aside.

16. Adverting to the merits of the application moved under Section 311 of the Cr.P.C. by the complainant, this Court does not find

any merit in the submissions made by his counsel. The complainant during his cross-examination which has been annexed as Annexure P-5 categorically conceded having received a reply to his legal notice (Annexure P-4) and still further also did not dispute that he had not mentioned about receipt of legal notice in his complaint and furthermore had not even annexed it with the complaint. The factum of an FIR/NCR having been registered qua the missing cheques stands duly mentioned in the said reply to the legal notice (Annexure P-4). Therefore, it cannot be digested and is unacceptable that the complainant was unaware about the registration of the FIR/NCR (Annexure P-3) at the time of filing of the complaint and even while getting himself examined. Furthermore, even after his cross-examination, the complainant had sufficient notice of the defence taken by the accused and the documents relied upon by him, thus, he could have taken appropriate steps to get the relevant witnesses examined and documents adduced in his evidence, as the case at that time was still at the stage of complainant's evidence. However, a perusal of the record reveals that the complainant had been taking continuous unnecessary adjournments before the Trial Court.

17. The complainant thus failed to exercise due diligence and is indulging in dilatory tactics. The complainant cannot be permitted to unduly prolong the trial by filing repeated applications under Section 311 of the Cr.P.C. at the fag end of the trial, moreso, when it is apparent that the complainant had been given ample and sufficient opportunities to lead evidence in support of his case. The case law relied upon by learned counsel for the complainant is distinguishable on facts and,

thus, would not come to his rescue.

18. As a sequel to the above discussion, the instant petition is allowed and the impugned order dated 20.03.2019 is set aside.

11.07.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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