

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-55367-2019

Date of Decision : November 15, 2023

SONIYA DUTTA

-Petitioner

V/S

M/S STL GLOBAL PVT LTD

-Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Rishab Jain, Advocate
for the petitioner.

KULDEEP TIWARI, J. (ORAL)

1. Through the instant petition, as instituted under Section 482 of the Cr.P.C., the petitioner assails the order dated 15.03.2019 (Annexure P-1), whereby, the learned Magistrate concerned closed the right of the petitioner to cross-examine the complainant, as provided under Section 145(2) of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'N.I. Act').

2. In addition, the petitioner has also assailed the order dated 05.10.2019 (Annexure P-2), whereby, the learned Magistrate concerned dismissed the application of the petitioner for recalling of witness under Section 311 of the Cr.P.C.

3. A perusal of the impugned order dated 15.03.2019 reveals that despite availment of five effective opportunities by the defence, the petitioner did not cross-examine the complainant, which led the learned Magistrate concerned to form an inference that the petitioner is unnecessarily delaying the trial and consequently, constrained him to

draw the order (supra).

4. The order (supra) caused grievance to the petitioner and led her to institute an application for recalling of witness under Section 311 of the Cr.P.C. The grounds, as urged therein for recalling of the impugned order (supra), were that since the petitioner was facing trial in three other cases, out of which, two cases were pending before the court of Judicial Magistrate Ist Class, Faridabad, while one case was pending in a separate court, therefore, he made an application before the learned Chief Judicial Magistrate concerned for consolidation of all the three cases. Thereupon, the learned Chief Judicial Magistrate concerned, vide order dated 03.06.2019, consolidated all the three cases and transferred them in one court. Moreover, the failure to cross-examine the complainant was attributed to change of counsel by the petitioner. Therefore, it was urged that since on the day, when the right of the petitioner to cross-examine the complainant was closed, the matter was pending for consolidation and transfer of aforesaid cases. Lastly, citing similarity(ies) in the prosecution and defence version in all the aforesaid cases, the petitioner claimed it essential to conduct cross-examination together in all those cases, otherwise, his defence would have become exposed.

5. However, the application (supra) did not find favour from the learned Magistrate concerned, on the ground, that he is not seized with any able jurisdiction or authority to re-call his own order and consequently, he rendered a dismissal order upon the application (supra), on 05.10.2019, for the reason of it being non-maintainable.

6. The dismissal order dated 05.10.2019 aggravated the

grievance of the petitioner and compelled him to approach this Court, through the instant motion, whereby, a challenge is laid to the impugned orders (supra).

7. The learned counsel for the petitioner, in his asking for the relief (supra), besides reiterating the submissions, as carried in the application (supra) for recalling of witness, makes submissions that the most important and prime witness, in a trial under Section 138 of the N.I. Act, is none else than the complainant himself, therefore, any denial to the petitioner/accused to cross-examine such a prime witness would tantamount to denying her the right to a fair trial, besides would violate her fundamental right, as envisaged under Article 21 of the Constitution of India. Citing “*audi alteram partem*” to be the most fundamental principle of natural justice, the learned counsel for the petitioner beseeches one effective opportunity to the petitioner to cross-examine the complainant, which he assures this Court, shall be done on a single date.

8. Before evincing any opinion upon the validity of the impugned orders (supra), or, upon the arguments addressed by the learned counsel for the petitioner, this Court deems it imperative to catch a glimpse of Section 311 of the Cr.P.C.

311. Power to summon material witness, or examine person present: *Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.*

9. A studied survey of the hereinabove extracted Section explicates that it carries two parts, inasmuch as, in the first part occurs the word ‘may’, while in the second part occurs the word ‘shall’. Since the first part carries the word ‘may’, therefore, it endows discretionary power to a criminal court, besides empowers it to, at any stage of enquiry, trial or other proceedings under the Code, summon any person as a witness, or, to examine any person in court, or, to recall and re-examine any person, whose evidence has already been recorded. However, the existence of the word ‘shall’ in the second part, imposes an obligation upon Court to take any of the above measures, if evidence of such a person is necessary for just decision of the case.

10. The Courts must examine an **“essential”** witness, under Section 311 of the Cr.P.C., only to arrive at a just decision and not to aid either the prosecution or the accused. Section 311 of the Cr.P.C. cannot be used as a tool by the litigants to fill up the lacunae in their evidence, otherwise, there would be no end to a trial.

11. The Hon’ble Supreme Court, in its judgment rendered in ***“Hanuman Ram V/s The State of Rajasthan and Ors.”, Criminal Appeal No.1597 of 2008 (Arising out of S.L.P. (Crl.) No.7382 of 2007), Decided on: 13.10.2008***, has dealt with the object of Section 311 of the Cr.P.C. The relevant paragraphs of the judgment (supra) are extracted hereinafter:-

“7. The object underlying Section 311 of the Code 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. The section is not limited only for the benefit of the

accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wide the power the greater is the necessity for application of judicial mind.

9. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by Court gives evidence against the complainant he should be allowed an opportunity to cross-examine. The right to cross-examine a witness who is called by a Court arises not under the provision of Section 311, but under the Evidence Act which gives a party the right to cross-examine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross-examination to the complainant.....”

12. Moreover, the power to cross-examine a witness is not enshrined in Section 311 of the Cr.P.C., rather it is prescribed in Section 138 of the Indian Evidence Act, which gives a party the right to cross-examine a witness, who is not his own witness. The first and foremost object behind cross-examination is to unearth the hidden facts and truth of the case, for thereby establishing the case of defence. Its another object is to impeach the credibility of a witness. Cross-examination is not merely a technical requirement, however, it is one of the tools/armaments in the hands of

accused to discredit the testimony of prosecution witness and to establish his innocence. Cross-examination ensures that the right to a fair trial is secured for the accused.

13. In view of the hereinabove discussed legal propositions, this Court has tested the facts and circumstances of the instant case.

14. The case set up by the complainant is founded primarily upon his own statement. Therefore, in case, the petitioner is denied his valuable right of cross-examining the complainant, it would be a violation of principles of natural justice and fair play, as then he would be unable to put forward his defence in effective manner, besides it would also tantamount to deny to the petitioner/accused, the right to a fair trial. In order for justice to prevail there has to be a fair trial. The trial will considered to be fair when there will be a trial conducted fairly, justly and with just procedural regularity, with parties having the right to rebut adverse evidence, which necessarily includes right to cross examination. Oral evidence of a witness cannot be complete unless he is being put to cross examination, which acts as a check and discredits the witness's testimony or credibility.

15. Though the petitioner herein made all efforts to delay the conclusion of trial, as he did not cross-examine the complainant despite availing five effective opportunity, however, yet in order to enable the petitioner/accused to establish his defence and to taint the version put forth by the complainant, the petitioner has the right to cross-examine him.

16. The instant petition has been pending before this Court since 2019 and the proceedings of the trial Court concerned have been ordered to remain stayed, vide order dated 06.02.2020. Therefore, it would be in the

interest of justice to grant a last opportunity to the petitioner/accused to cross-examine the complainant. Accordingly, the petitioner is permitted to cross-examine the complainant, however, this opportunity is subject to deposit of costs of Rs.35,000/-, which shall be forthwith deposited by the petitioner before the learned trial Court concerned, whereupon, the latter shall disburse the costs amount to the complainant.

17. Consequently, the instant petition is allowed, and, the impugned orders dated 15.03.2019 and 05.10.2019 are hereby quashed. However, considering the age of the trial, it is deemed imperative to direct the learned trial Court concerned to make all possible endeavours to expeditiously conclude the trial, preferably within six months from today.

November 15, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No