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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-11849-2024 (O&M)
Date of decision: 06.03.2024

Foremost Dairies Private Limited & Another

...Petitioners

Versus

Mohammad Yaseen

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Gaurav Vir Singh Behl, Advocate
for the petitioners.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/accused under Section 482 Cr.P.C seeking quashing of order dated 29.02.2024 Annexure P-7 passed by the learned trial Court in case NACT-966/2019 titled as Mohammad Yaseen Vs. Foremost Dairies Private Limited etc. whereby an application filed by the petitioner under Section 311 Cr.P.C. for recalling of CW-1 complainant Mohammad Yaseen for his further cross-examination has been dismissed.
2. Counsel for the petitioner submits that complainant used to sell milk to father of the petitioner who was running dairy. That unfortunately, father of the petitioner died on 04.01.2021 and the petitioner has nothing to do with the cheques in question which were of year 2019 and the same are not bearing the signatures of the petitioner. It is further submitted that in his

deposition dated 09.11.2023, CW-1 specifically stated that no weighing machine slip was produced by him and further stated that he shall go to his house and see and if any such slip is available, the same would be produced. Counsel for the petitioner further submits that however on the next date fixed for which cross-examination of CW-1 was deferred, the counsel appearing on behalf of the petitioner failed to cross-examine him (CW-1) with regard to aforesaid material aspects of the case. Counsel for the petitioner further submits that for that purpose, application under Section 311 Cr.P.C. was filed by the petitioner in order to bring the truth before the Court by further cross-examining CW-1. However, the said application was dismissed by the trial Court in a mechanical manner vide impugned order Annexure P-7. Counsel for the petitioner further submits that petitioner cannot be allowed to suffer due to mistake of his counsel. That even otherwise trial Court is empowered under Section 311 Cr.P.C. to recall any such witness for his further cross-examination as the same is necessary for proper adjudication of the case. Counsel for the petitioner further submits that the impugned order deserves to be set aside. In support of his contentions, counsel for the petitioner has placed reliance upon CRR-417-2020 (O&M) Vijay Chopra @ Vijay Kumar Chopra Vs. Manveer Singh and Another decided on 28.03.2022.

3. I have considered the submissions made by counsel for the parties.

4. Respondent has filed one complaint under Section 138 NI Act against both the petitioners and Harbhajan Singh Dureja father of petitioner No.2 with regard to dishonor of three cheques dated 07.05.2019, 21.07.2019

and 28.08.2019. It is brought to the notice of the Court that Harbhajan Singh Dureja died on 04.01.2021 and it is the case of the petitioners that the cheques in question were not signed by petitioner No.2 who is stated to be director of petitioner No.1 Private Limited Company. It is the case of the petitioners that the aforesaid facts were not put to the complainant in his cross-examination due to negligence of the counsel for the petitioners. From the perusal of Annexure P-5, it appears that respondent/complainant appeared in witness box as CW-1 on 09.11.2023 for his cross-examination and at that time, he took time to find out weighing machine slip if any, lying in his house and if available to produce the same in the Court and further cross examination of the witness was deferred and the said cross-examination was concluded on 04.01.2024. As has been contended by the counsel for the petitioners, due to inadvertence/oversight, the counsel for the petitioners failed to put any question with regard to weighing machine slips in further cross-examination of CW-1 dated 04.01.2024. It is settled position of law that a party cannot be allowed to suffer on account of the lapse or omission on the part of his counsel. Furthermore, section 311 Cr.P.C confers a vide discretion on the Court to act as the exigencies of justice require to summon a witness or recall or re-examine any person already examined if his evidence appears to be essential for the just decision of the case. Further, it is the duty of every Court to ensure that a fair and proper opportunity is granted to the accused for just decision of the case.

5. In the case in hand, petitioners intend to bring on record the fact with regard to death of Harbhajan Singh Dureja and that the cheques in question were not signed by petitioner No.2 Sandeep Dureja son of

Harbhajan Singh Dureja and to further cross-examine the complainant with regard to weighing machine slips. The aforesaid aspects are necessary for the proper adjudication of the case.

6. Resultantly, the present petition is allowed and application filed by petitioners under Section 311 Cr.P.C. is allowed and order dated 29.02.2024 (Annexure P-7) passed by the learned trial Court is hereby set aside and CW-1 Mohammad Yaseen (Complainant) be recalled by the trial Court, for his further cross-examination by the defence counsel to put him facts regarding death of Harbhajan Singh Dureja and signatures appearing on the disputed cheques and to further confront him regarding weighing machine slips, subject to deposit of costs of Rs.3,000/- by the petitioners with the District Legal Services Authorities concerned.

7. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent. However, if he feel dis-satisfied with this order, he may move an application to recall the same.

8. However, anything observed herein above shall not be treated as an expression of opinion on merits of the case.

9. Pending application, if any, stands disposed of.

06.03.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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