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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRR No.418 of 2018 (O&M)
Date of decision : 22.05.2024**

M/s Riya Fabrics

....Petitioner

Versus

M/s Neha Automation and another

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Amit Prashar, Advocate
for the respondents.

PANKAJ JAIN, J. (ORAL)

Present revision petition is directed against the order dated 06.11.2017 passed by Additional Sessions Judge, Faridabad whereby in appeal preferred by the accused Appellate Court remanded the matter back to the Trial Court for decision afresh and also allowed the application filed by the accused under Section 391 Cr.P.C.

2. On the complaint filed by petitioner respondents were summoned to face trial for offence punishable under Section 138 of the N.I. Act. The trial culminated in the order of conviction. Respondents were sentenced to undergo R.I. for a period of 1 year along with compensation of Rs.3.00 lac to be paid to the complainant. In the appeal preferred by the

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accused an application was moved under Section 311 Cr.P.C. to prove certain delivery orders as the accused claimed that the same could not be produced during the course of trial on account of inadvertence. There were two complaints. During the course of hearing, the Appellate Court found that the accused examined himself as DW1 in both the complaints. However, his cross-examination recorded in complaint bearing No.1572 of 2011 titled as 'Krishna Fabrics vs. M/s Neha Automation and another' was photocopied and placed on the file in the complaint case titled as M/s Riya Fabrics vs. M/s Meha Automation. Appellate Court on discovering the aforesaid legal infirmity set aside the decision passed by the Trial Court and remanded the matter back to the Trial Court to decide afresh.

3. Counsel for the petitioner while assailing the impugned order submits that Trial Court erred in remanding the matter back merely on the pretext of application received under Section 391 Cr.P.C. Appellate Court ought to have recorded additional evidence itself or should have got the same recorded by the Trial Court and called for the report and decided the appeal on merits itself. Reliance is being placed upon law laid down in the case of **Tokh Ram vs. State through Delhi Administration, 1983(1) R.C.R. (Criminal) 154, Chandra Lal Das and others vs. State of Tripura, 2003(3) CCR 177, CRR No.3473 of 2013 titled as Shailesh Kumar Gupta vs. State of Haryana, decided on 15th of March, 2017 and Bhanwar Singh vs. State of Rajasthan, 2011(22) R.C.R. (Criminal) 252.**

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4. Per contra, counsel for the respondents submits that the Appellate Court remanded the matter to the Trial Court after setting aside the judgment not on account of the application received for additional evidence but only after legal infirmity was discovered. Thus, no fault can be found with the orders passed by the Appellate Court.

5. I have heard rival contentions raised by counsel for the parties and have gone through records of the case carefully with their able assistance.

6. This Court finds that the present revision petition sans merit and deserves to be dismissed.

7. Evidently the order has been passed in appeal and not on application filed seeking permission to lead the additional evidence. The relevant part of the impugned order needs to be perused which reads as under :

“8. At the very outset, it is pertinent to mention that accused was facing trial in two criminal complaints. One complaint was bearing no. 1529 of 2011 titled as ' M/s Riya Fabrics Vs. M/s Neha Automation and another' against which decision, the present appeal has arisen. He was facing trial in another complaint bearing no.1527 of 2011 titled as 'M/s Krishna Fabrics Vs. M/s Neha Automation and another. In both the complaints, he examined himself as DW1 but it is strange to notice that his cross-examination recorded in complaint bearing no.1527 of 2011 titled as 'M/s Krishna Fabrics Vs. M/s Neha Automation and another' was photocopied and placed on the file in the present case with his signatures. However, no such procedure is prescribed under the Cr.P.C. or under Indian Evidence Act. A witness has to be examined and cross-examined 6 independently and separately in

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all the cases and his cross examination recorded in another case cannot be photocopied and placed in another file and treated as evidence in other case. A great illegality and irregularity has, thus, been committed by learned trial court while adopting such a practice. Rather statement of DW1 cannot be looked into and matter requires to be remanded back on this score only for a decision afresh.

9. During pendency of appeal, an application has been moved by the accused under Section 311 Cr.P.C. but the same shall be treated to be one under Section 391 Cr.P.C. By way of this application, it is submitted that applicant has produced various documents at the time of cross-examination of complainant which were exhibited. However, there were some other delivery orders also which had been placed on the file of the trial court but were not inadvertently exhibited and it has been prayed that applicant be allowed to tender the said documents in evidence. Though, reply has been filed to the application and same has been opposed yet the delivery order dated 21.7.2010 was annexed along with the other documents by the accused, which remained unexhibited inadvertently. Since matter is being remanded back to the learned trial court for a decision afresh, no prejudice will be caused to the complainant in case accused is allowed to lead the delivery order dated 21.7.2010 in evidence as complainant will get an opportunity to cross-examine the accused or his witness when he will prove the delivery order in evidence. Accordingly, the application for leading additional evidence is also allowed.

10. Resultantly, impugned judgment is, thus, not sustainable and is accordingly set aside. Trial court is directed to decide the case afresh after giving opportunity to the accused to lead evidence as observed above. Accused shall be at liberty to prove delivery order dated 21.7.2010 in his evidence before the learned trial court. The parties are directed to appear before the Trial Court on 15.11.2017, for further proceedings. Appeal file be consigned to the record room and the trial court record along with copy of this judgment be returned.”

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8. Ld. Counsel representing the petitioner is wrong in contending that the remand is on account of application for additional evidence. Rather the Appellate Court remanded back the matter after setting aside the impugned judgment of conviction only after pointing out the legal infirmity committed by the Trial Court of having used evidence adduced by the defendants in one complaint for the purpose of another. Counsel for the petitioner does not dispute that though the complaints were tried simultaneously but there was no order of them being tried together by holding joint trial. There were two separate complaints which were being conducted through two separate trials. Thus, the Appellate Court rightly held that the lapse on part of the Trial Court was material illegality and for that reason the judgment passed in complaint case wherein the evidence adduced in the other case was utilized, deserves to be set aside and remanded back.

9. In the Code of Criminal Procedure, 1973 the powers of Appellate Court have been specifically provided under Section 386 which reads as under :

386. Powers of the Appellate Court.—After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under section 377 or section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order or acquittal, reverse such order and direct that further inquiry be made, or that the accused be

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re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b) in an appeal from a conviction—

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii) alter the finding, maintaining the sentence, or

(iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same—

(c) in an appeal for enhancement of sentence—

(i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

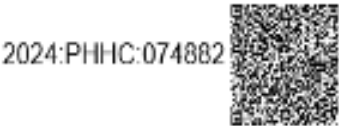
(ii) alter the finding maintaining the sentence, or (iii) with or without altering the finding, alter the nature or the extent, or, the nature and extent, of the sentence, so as to enhance or reduce the same;

(d) in an appeal from any other order, alter or reverse such order;

(e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.



10. Thus, the Appellate Court rightly exercised power vested in him under Section 386(b)(i). No other point has been raised. In view of above, this Court finds that no fault can be found with the impugned judgment passed by the Appellate Court.
11. Resultantly, the present revision petition is dismissed.

May 22, 2024			(Pankaj Jain)
Dpr			Judge
	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No