



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

CRM-M-60260-2024

Date of decision: 11.12.2024

Sant Valves Pvt. Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Harsh Aggarwal, Advocate for the petitioner.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 528 of BNSS 2023 seeking quashing of order dated 05.11.2024 Annexure P-4 passed by the Court of Judicial Magistrate Ist Class, Jalandhar in criminal case No.CHI No.2080 of 2018 titled State Vs. Harpreet Singh having FIR No.52 dated 23.02.2018, registered under Section 63 of Copyright Act, 1957 and Sections 419, 420, 468, 471 IPC, at Police Station Division No.8, Police Commissionerate, Jalandhar, vide which the application filed by the petitioner/prosecution under Section 311 Cr.P.C. to summon and examine Arvind Dhumal son of Rup Singh (since deceased), by way of additional evidence, has been dismissed.

2. The counsel for the petitioner submits that Sant Valves Pvt. Ltd., Jalandhar through its Managing Director Rup Singh gave complaint in writing to the police against respondents No.2 to 5 with regard to infringement of copyright, cheating and forgery committed by the said respondents. On the basis of the said complaint, FIR No.52 dated 23.02.2018 Annexure P-1 was registered against respondents No.2 to 5. On completion of investigation, police presented challan and after framing of charges, now trial is fixed for prosecution evidence. Unfortunately, Rup



Singh, Managing Director of the complainant company has died and prior to his death, Rup Singh never appeared in the witness box as a prosecution witness. In the given eventuality, the prosecution filed an application (Annexure P-2) under Section 311 Cr.P.C. for permission to examine Arvind Dhumal, legal director of complainant company, who is also son of Rup Singh, Managing Director (since deceased). The counsel for the petitioner further submits that the statement of Arvind Dhumal is necessary for the just decision of the case as he is also fully aware of the facts of the prosecution case. The counsel for the petitioner also referred to resolution passed by the Board of Directors of the complainant company whereby Arvind Dhumal has been authorized to pursue the aforesaid criminal case on behalf of the complainant company. The copy of the said resolution is available on the record. The counsel for the petitioner further submits that the learned trial Court dismissed the application filed under Section 311 Cr.P.C in a mechanical manner without application of mind and that the impugned order Annexure P-4 deserves to be set aside. The counsel for the petitioner also made prayer that the petitioner be also given liberty to seek permission of the trial Court to continue the prosecution, in order to avoid any legal complication.

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

4. FIR Annexure P-1 was got registered by Rup Singh being Managing Director of complainant company against respondents No.2 to 5. It appears that during pendency of the trial, Rup Singh died and prior to his death, he was not examined as a prosecution witness. In this eventuality, the prosecution moved an application under Section 311 Cr.P.C to examine Arvind Dhumal, the Legal Director of the complainant company by way of an additional evidence on the ground that he is son of Rup Singh (since deceased) and is fully knowing the facts of the case.

5. Apparently, it appears that Rup Singh being Managing Director of the complainant company lodged FIR Annexure P-1. During pendency of the trial, Rup Singh has died. As per resolution dated 21.11.2024 passed by the Board of Directors of the complainant company, Arvind Dhumal son of



Rup Singh is duly authorized to represent the complainant company in the criminal case relating to FIR Annexure P-1.

6. The Hon'ble Supreme Court in ***Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (Dead) by LRs 2004 (12) SCC 509*** has held that heir of the complainant can be allowed to file an application under Section 302 Cr.P.C to continue the prosecution, even after the death of the complainant.

7. Section 302 of Cr.P.C reads as under:-

“Section 302. Permission to conduct prosecution.

(1)Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a Public Prosecutor or Assistant Public Prosecutor, shall be entitled to do so without such permission: Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.(2)Any person conducting the prosecution may do so personally or by a pleader.”

8. It is settled position of law, that to bring in application under Section 302 Cr.P.C, permission to conduct prosecution has to be obtained from the Magistrate inquiring into or trying a case. The Hon'ble Supreme Court in ***Shri Balasaheb K. Thackeray Vs. Shri Venkat @ Babru (2006) 5 SCC 530*** observed that if any permission is sought for by the legal heirs of the deceased complainant to continue prosecution, the same shall be considered in its perspective by the Court dealing with the matter.

9. In the light of the settled position of law as discussed above, the trial Court fell into error while passing the impugned order Annexure P-4 with observations that Arvind Dhumal was not cited as a witness and did not join the investigation and was never made a party to the criminal case in question. Resultantly, the impugned order is not sustainable and deserves to be set aside and is hereby set aside.

10. In view of the above, the present petition is hereby disposed of with liberty to the petitioner to move an application under Section 302 Cr.P.C seeking permission of the trial Court to continue the prosecution, on the basis of resolution dated 21.11.2024 passed by Sant Valves Pvt. Ltd,



whereby Arvind Dhumal is authorized by the complainant company to pursue the aforesaid criminal case against respondents No.2 to 5. The said application is to be filed by the petitioner by the next date of hearing fixed in the trial Court. The said application is to be disposed of by the learned trial Court in accordance with law, at the earliest. Only after passing of an appropriate order in the said application under Section 302 Cr.P.C, the learned trial Court is to consider and decide afresh an application Annexure P-2 filed by the prosecution under Section 311 Cr.P.C for permission to examine Arvind Dhumal, Legal Director of complainant company, in accordance with law, after ascertaining as to whether the evidence of Arvind Dhumal is necessary for proper adjudication of the criminal case. In case, the petitioner fails to file any such application under Section 302 Cr.P.C within the stipulated period, the present petition shall be deemed to have been dismissed.

11. Keeping in view the nature of order being passed, no notice is required to be issued to the respondents No.2 to 5. However, if they feel dissatisfied with this order, they may move an application to recall the same.

11.12.2024

Yogesh

Whether speaking/reasoned:-
Whether reportable:-

(KARAMJIT SINGH)
JUDGE

Yes/No
Yes/No