2025:PHHC:012415

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-4275-2025 (O&M)
Reserved on: 27.01.2025
Pronounced on: 28.01.2025

M/s Harihar Polymers and another

... Petitioners

Vs.

M/s Sabsons Agencies Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amardeep Singh, Advocate and
Mr. Baljinder Singh, Advocate
for the petitioners.

Mr. Ankur Bali, Advocate
for the respondent.

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HARPREET SINGH BRAR, J.

1. Present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') seeking setting aside of the order dated 30.11.2024 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Chandigarh, in complaint bearing No.NACT/16751/2018, titled as '*Sabsons Agencies Pvt. Ltd. Vs. M/s Harihar Polymers and another*', vide which the application filed by the petitioners for re-examination of DW1 and

DW-3 stands dismissed.

2. In brief, facts of the case are that the respondent-complainant is sole distributor of Gujarat Narmada Fertilizers and Chemicals Limited (for short 'GNFC') and petitioner No.1 is a proprietorship firm, which was engaged in chemical blending and was using the chemicals as raw material supplied by the respondent-complainant and petitioner No.2 is its proprietor. Petitioner No.1 and the respondent-complainant were in business dealings since financial year 2016-2017 till 2017-2018. The respondent-complainant took undated blank cheques from petitioner No.1 as security towards credit sales. When VAT system of taxation was in force, there was no dispute with regard to placing of orders, raising of invoices etc. However, in July, 2017, after implementation of GST, the respondent-complainant raised 11 invoices, mentioned in the complaint (*supra*), against which due to non-making of actual supplies, no GR/LR was issued/obtained from petitioner No.1, therefore, no payment liability was accrued. It is pertinent to note that e-way billing system was implemented w.e.f. 01.04.2018. During that period, the respondent-complainant, by taking undue advantage of process flaws, manipulated the GR/LR and transporter related details on invoices, which actually belong to dealings/deliveries between GNFC and the respondent-complainant. The respondent-complainant, on the basis of false and fabricated invoices, presented the cheques given as security of legally recoverable outstanding, for

encashment, without any intimation to the petitioners and after dishonouring of the said cheques, the respondent-complainant filed two complaints on the same set of allegations except the cheque numbers i.e. criminal complaint No.NACT/16749/2018, for dishonouring of cheque No.000375 dated 17.05.2018 amounting to Rs.50,00,000/-, cheque No.000376 dated 25.05.2018 amounting to Rs.65,95,360/- and cheque No.000377 dated 04.06.2018 amounting to Rs.78,10,848/- and the complaint (*supra*) on account of dishounouring of cheque No.000378 dated 14.06.2018 amounting to Rs.36,11,250/- and cheque No.000379 dated 21.06.2018 amounting to Rs.96,28,800/-. Thereafter, the parties led their respective evidence and examined the witnesses. However, the petitioners filed an application for re-examination of DW1 & DW3, which stands dismissed by learned trial Court vide impugned order dated 30.11.2024 (Annexure P-1). Aggrieved by the said impugned order, the petitioners have approached this Court by way of filing the present petition.

3. Learned counsel for the petitioners, *inter alia,* contends that the complaint (*supra*) was filed on the allegations that the petitioners had not paid its dues, against which the cheques issued by them, got dishonoured. It is specific defence of the petitioners that the cheques in question were given as security against delivery of the stocks. The respondent-complainant created 11 false and fabricated Tax Invoices to show the delivery of stocks, however, the

stocks were never delivered to the petitioners. In order to rebut the liability, following witnesses were summoned at the instance of the petitioners in defence evidence: -

(i) Head of Accounts/concerned Account Officer/Record Keeper of GNFC, having registered and head office at Narmada House, Corporate Office, PO Narmada Nagar-392015, District Bharuch, Gujarat, India along with details of all supplies including LR/GR numbers, made by GNFC to Jai Shree Transport Corporation, having its address at 2506, Opposite Asian Paint, GIDC, Ankleshwar-393002, Gujarat, India, for the months of 01.07.2017 to 31.10.2017.

(ii) Head of Accounts/concerned Account Officer/Record Keeper of GNFC, at TDI-Dahej Unit bearing plot No.D/II/8, Dahej II, Industrial Estate, at & Post Office Rahiyad-392130, Dahej, Taluka Vagra, District Bharuch, Gujarat along with details of all supplies including LR/GR numbers, made by GNFC to Jai Shree Transport Corporation, having its address at 2506, Opposite Asian Paint, GIDC, Ankleshwar-393002, Gujarat, India, for the months of 01.07.2017 to 31.10.2017.

(iii) Mr. Sanjay Bararia, Head/Sole Proprietor (9824121439)/Head of Accounts, Jai Shree Transport Corporation, having its address at

A-2-2506, Opposite Asian Paint, GIDC, Ankleshwar-393002, Gujarat, along with entire record of all goods transported including respective LR/GR number, for consignors namely GNFC to consignee namely Sabsons Agencies Pvt. Ltd., Kothi No.96, 1st Floor, Phase 2, Sector 54, Mohali-160055 and Harihar Polymers, 16/7, Block-1, Gali No.14, Swaroop Nagar, New Delhi-110042, for the period started from 01.07.2017 to 31.10.2017 and entire record of all goods transported including respective LR/GR number, for consignors namely GNFC to consignee namely Sabsons Agencies Pvt. Ltd., Kothi No.96, 1st Floor, Phase 2, Sector 54, Mohali-160055, for the period starting from 01.07.2017 to 31.10.2017.

(iv) Concerned senior official from the GST Department, Division Ankleshwar, Gujarat; along with (I) complete GST record of Mr. Sanjay Bararia, Head/Sole Proprietor (9824121439)/Head of Accounts, Jai Shreet Transport Corporation, having its address at A-2-2506, Opposite Asian Paint, GIDC, Ankleshwar-393002, Gujarat (having GST No.24AHX8889N1Z7) including all Forms, for the period starting from 01.07.2017 to 31.03.2018.

4. Learned counsel for the petitioners further contends that on 14.06.2024, the record was produced by DW1 and DW3 and he refers to Tax

Invoice dated 11.08.2017 (Annexure P-2) issued by the respondent-complainant to the petitioners, which is shown to have been dispatched through Jai Shree Transport Corporation (for short 'JSTC') with Goods Receipt No.29662/29663. Learned counsel for the petitioners further refers to Tax Invoice dated 31.07.2017 (Annexure P-5) issued by GNFC in the name of the respondent-complainant and it also carries Goods Receipt No.29662, for the vehicle of JSTC. He also refers to Tax Invoice dated 04.09.2017 (Annexure P-2) issued by the respondent-complainant to the petitioners and it carries Goods Receipt No.30046, dispatched through JSTC.

5. Learned counsel for the petitioners vigorously put forth his arguments that 11 Tax Invoices (Annexure P-2) are false and fabricated to show the delivery of stocks to the petitioners. However, Tax Invoices (Annexure P-5), which were proved on record as Ex.D2/DW1 clearly indicate that manufacturer GNFC has issued the said invoices in the name of the respondent-complainant and it has made the payment with regard to stocks mentioned in the same, which were delivered through Goods Receipt No.29662, however, the respondent-complainant fabricated the invoices by showing the delivery through same Goods Receipt No.29662. Learned counsel for the petitioners relies upon a judgment of the Hon'ble Apex Court in ***Rammi @ Rameshwar Vs. State of M.P., (1999) 8 Supreme Court Cases 649*** and submits that in view of the depositions of DW1 and DW3, their re-examination

is sought for clarification of the ambiguity surfaced during cross-examination and as such, ambiguity can only be resolved through re-examination of these witnesses. The petitioners being accused have every right to seek more elucidation from the witnesses and they have the freedom and right to put the questions, as they deem necessary for this purpose. He further relies upon a judgment of this Court in ***Siddharth Ray Vs. State of Punjab and another,*** passed in ***Criminal Misc. No.M-598 of 2014, decided on 09.10.2014*** and submits that it is well settled law that tool of re-examination can be used to remove the ambiguity, that has arisen during the cross-examination and such provision is brought under Section 138 of the Indian Evidence Act, 1872 (for short 'IEA, 1872) [*now Section 143 of Bharatiya Sakshya Adhiniyam, 2023 (for short 'BSA, 2023)*]. Learned counsel for the petitioners further contends that the witnesses produced by the petitioners in defence were bound down and no formal order for their discharge was passed, however, on the next date of hearing, they have not appeared and the respondent-complainant refused to subject them to further cross-examination.

6. *Per contra,* learned counsel for the respondent contends that the petitioners filed an application seeking re-examination of DW1 & DW3 only with an intention to delay the conclusion of trial. The proceedings under the provisions of Negotiable Instruments Act, 1881 (for short 'NI Act') are summary in nature and no ambiguity or new fact has come on record, which

warrant any clarification for re-examination of the said witnesses. Further, the scheme of legislative mandate of the IEA, 1872 (*now BSA, 2023*) clearly indicates that re-examination is purely the discretion of learned trial Court and the petitioners are adopting every trick to delay conclusion of trial. The petitioners earlier made five attempts before this Court by filing different petitions and they could not succeed in none of the attempts and even they approached the Hon'ble Apex Court by filing SLP, which was also dismissed on 02.11.2022. Further, the petitioners filed the application for re-examination, when the case is listed for addressing the final arguments and they have already availed input tax credit from the department concerned with regard to Tax Invoices issued by the respondent-complainant to the petitioners (Annexure P-2). Further, returns namely GST R-1 and GST R-3B were made on regular basis and details filled in by the consignor in GST R-1 form, at the time of uploading on the GST portal, automatically reflect in Form 2-A of the consignee. Learned counsel for the respondent relies upon a judgment of the Hon'ble Supreme Court in ***Ratanlal Vs. Prahlad Jat and others, Law Finder Doc Id#900876*** and submits that the object of provisions of Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') (*now Section 348 of BNSS)* is to do justice not only from the point of view of accused and the prosecution, but also from the point of view of orderly society and this discretion has been exercised judiciously to prevent failure of justice. Further, such discretion can only be exercised, if the evidence appears to be essential for the just adjudication of the case and prayer for recalling/re-examination cannot be entertained when the application filed by the petitioners is for the sole purpose of filling the lacunae and delaying the trial.

7. Having heard learned counsel for the parties and after perusing the record of the case with their able assitance, it transpires that the application for re-examination of DW1 & DW3 has been filed, however, it has not been highlighted how re-examination of these witnesses is essential for just adjudiction of the case. Further, what kind of ambiguity has arisen during cross-examination of these witnesses, has not been explained. The depositions of these witnesses are available on record as Annexures P-3 & P-6 and Chief Manager (Legal), GNFC appeared as DW1 and for just adjudication of the dispute, his cross-examination is relevant, which reads as under: -

> *"XXXX by Advocate Sh. Vikas Jain, counsel for complainant.*
>
> *Q. Is it correct that in case of direct sale by any dealer of GNFC, there is no mandate of GNFC to disclose the name of the actual purchaser party at the time of purchase of chemical from GNFC by the dealier?*
>
> *Ans. Yes. If there is a direct purchase by the dealier in his own name and the shipping party is the same, GNFC mentioned in the invoice only the dealer name at both places in the invoice i.e. "name of consignee" and "on account of".*
>
> *Q. Is it correct that where the consignee and on account of party is same in the invoice i.e. dealer of GNFC, the dealer is having*

authority to sell the said consignment or part thereof to any third party?

Ans. GNFC sells goods ex-factory and thereafter we have no concern where the said goods are sold by the dealer.

Q. Is it correct that it is routine practice followed by the dealer of GNFC to sell the consignments lifted from GNFC in their own name, en route directly to any third party after issuance of their own invoice in the name of third party?

(objected to by counsel for the accused that once the witness has already said that GNFC has no concern where the goods are sold and the said practice does not relate to GNFC, the following question is irrelevant and deserves to be disallowed) (objection heard, kept open and to be decided at final stage).

Ans. Yes."

8. Further, it is admitted fact that GNFC is the manufacturer and Tax Invoices (Annexure P-5) issued in the name of the respondent-complainant i.e. M/s Sabsons Agencies Pvt. Ltd., who made the payment with regard to stocks. Perusal of the aforementioned cross-examination clearly indicates that there is no ambiguity. As far as having the same goods receipt number in the Tax Invoices (Annexure P-2) issued by the respondent-complainant to the petitioners and the Tax Invoices (Annexure P-5) issued by GNFC to the respondent-complainant are concerned, it indicates the transit sale. Further, perusal of these Tax Invoices indicates that quantity of the stocks is the same and in the Tax Invoices (Annexure P-2), it is clearly mentioned that the petitioners are the buyers other than the consignee. It is admitted fact that Input

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Tax Credit has been passed on to the petitioners and the same finds mention in the relevant record of GST Department.

9. The legislative mandate contained in Section 145 of NI Act provides that learned trial Court may summon the complainant for his cross-examination to the facts contained in his examination-in-chief. The purpose and intent of NI Act is for fast and expeditious trial. The degree of satisfaction is required for the accused to rebut the presumption is preponderance of probability. Further, NI Act is a special legislation and these provisions will dislodge the applicability of general statute. The provisions of Section 311 of Cr.P.C. (*now Section 348 of BNSS*) have to be read with the provisions of Section 143(3) of NI Act, which provides that the trial under NI Act should be conducted as expeditiously as possible and that would conclude within six months from the date of filing of complaint. The complaint in the present case was filed in the year 2018 and the witnesses have already deposed on the basis of record summoned by the petitioners, the Courts are required to adopt pragmatic and practical approach while passing an order recalling or re-examination of the witnesses until and unless the ambiguity is pointed out and re-examination is essential for the just adjudication of the case. Such power cannot be exercised at the *ipse dixit* of the accused in a casual manner. The power to recall or re-examine any witness, already examined, is to be exercised sparingly after forming an opinion that such power is necessary for just and

proper decision of the case.

10. A two Judges Bench of the Hon'ble Supreme Court in ***VN Patil Vs. K. Niranjan,*** passed in ***Criminal Appeal No. 267 of 2021,*** decided on 04.03.2021, examined the scope of the power under Section 311 of Cr.P.C. (*now Section 348 of BNSS*) and following was observed:-

> *"Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 significant expression that occurs is 'at any stage of enquiry or trial or other proceeding under this Code'. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion."*

11. The Hon'ble Supreme Court in ***Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346*** has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C. (*now Section 348 of BNSS*) is dictated by exigency of the situation based on the principle of fairplay and goodwill and existence of the evidence being essential for the just adjudication of the case is

the only guiding factor and the ends of justice requires the examination of any person, which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the Court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

12. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab, 1982 Cr. LJ 2201*** has held as under:-

> *"The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be*

> *prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added).*

13. No other point was raised or argued. The judgments cited by learned counsel for the petitioners are not applicable to the facts and circumstances of the present case and the same are distinguishable on facts.

14. In view of the facts and circumstances of the case and the law settled by the Hon'ble Supreme Court and this Court in the cases referred to above, no illegality or perversity has been found in the impugned order passed by learned trial Court, as it has correctly adverted to the factual matrix in the light of the provision of Section 311 of Cr.P.C. (*now Section 348 of BNSS*) and rightly concluded that there is no ambiguity, which necessitates re-examination of DW1 & DW3. The necessary ingredients for invoking the power under Section 311 of Cr.P.C. (*now Section 348 of BNSS*) are completely missing.

15. Accordingly, the present petition is dismissed being devoid of any merit.

16. All the pending miscellaneous application(s), if any, shall stand disposed of.

17. However, nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and learned trial Court shall proceed without being prejudiced by the observations of this Court.

[HARPREET SINGH BRAR]
JUDGE

28.01.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No