M/S HARIHAR POLYMERS v. M/S SABSONS AGENCIES PVT. LTD, (2022-1)205 PLR 370, 2022 PLRonline 8153

PUNJAB AND HARYANA HIGH COURT

Before: Justice Ashok Kumar Verma.

M/S HARIHAR POLYMERS and another – Petitioners

versus

M/S SABSONS AGENCIES PVT. LTD. – Respondent

CRM-M-49089 of 2021

(i) Negotiable Instruments Act, 1881 (26 of 1881), Section 145(2) – Makes it possible for the evidence of the complainant to be taken without presence of an accused being an essential prerequisite condition – Complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry/trial or other proceedings in the Court – In case the complainant is required to be re-examined, the Court needs to pass a specific order either on the application under Section 145(2) of the N.I. Act or suo motu by the Court.

(ii) Negotiable Instruments Act, 1881 (26 of 1881), Section 145 – After serving notice in terms of Section 251 of the Cr.P.C., upon an accused, the Trial Court shall fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of the Act for recalling a witness for cross-examination – Magistrate must ensure that the procedure relating to examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case – In case the complainant is required to be re-examined, the Court needs to pass a specific order either on the application under Section 145(2) of the N.I. Act or suo motu by the Court.

Held, matter listed for the cross examination of the complainant. Trial Court has rightly allowed the complainant for re-examination suo motu, keeping in view the peculiar facts and circumstances of the present case and the stakes involved therein. Application of the accused for striking off the evidence has rightly been dismissed. If the complainant is not allowed in the case at hand to file detailed affidavit, then the purpose and purport of the provisions contained in the N.I. Act would be rendered to be a nullity and the same would definitely prejudice the indefeasible rights of the complainant. [Para 11]

Cases referred:

1. (2014-2)174 PLR 550 (SC), 2014 PLRonline 6165 (SC), *Indian Bank Association v. Union of India.*

2. 2019 PLRonline 3024 (P&H), *M/s Prince Layer Cum Hatchery Farm v. Sanjeev Aggarwal*.

3. 2015 PLRonline 0007 (Andhra.), *Kalakoti Niranjan Reddy v. State of Andhra Pradesh.*

Mr. Ashish Aggarwal, Sr. Advocate with Mr. Vipul Aggarwal, for the petitioners

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Ashok Kumar Verma, J. – *(25.11.2021)* – This petition has been filed under Section 482 of the Cr.P.C. for quashing the impugned order dated 07.12.2019 passed by the Judicial Magistrate First Class, Chandigarh in complaint case No.16749 of 2018 (M/s Sabsons Agencies Pvt. Ltd. vs. M/s Harihar Polymers and another) whereby the application of the petitioners/accused for striking off the evidence has been dismissed.

2. Brief facts as sculled out from the paper book are that the petitioners are accused in a private complaint filed by respondent under Sections 138 read with 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') on the ground that the petitioners-accused have failed to make payment of Rs.3,33,08,649/- towards discharge of their joint and several legal liability due against the respondent/complainant company in lieu of the goods purchased by the petitioners/accused from time to time. During the proceedings before the Trial Court, the petitioners/accused filed an application (Annexure P-5) for striking off from the record of the case the 2nd affidavit of examination-in-chief dated 17.08.2019 and the documents filed alongwith it by the witness (CW-1) of the complainant and tendered in evidence on 29.08.2019.

3. The case of the petitioners is that the petitioner has filed the said application for striking off the evidence of the complainant/respondent in view of the law laid down by the Hon'ble Supreme Court in case *Indian Bank Association v. Union of India,*[1] (2014-2)174 PLR 550 (SC), 2014 PLRonline 6165 (SC), (2014)5 SCC 590 wherein the Hon'ble Supreme Court has directed the Courts not to examine the complainant twice.

4. Per contra the respondent/complainant resisted the application filed by the petitioners/accused on the ground that there is no bar under the law thereby restraining the complainant to place on record the documents as well as detailed affidavit during trial in his evidence and the evidence tendered at pre-summoning stage is for the Court to make an intent as to whether all the necessary ingredients under Section 138 of the N.I. Act have been fulfilled or not at prima facie, which cannot debar the complainant from filing the fresh affidavit in post summoning stage, in view of the judgments passed by this Court in *M/s Prince Layer Cum Hatchery Farm v. Sanjeev Aggarwal*[2] , 2019 PLRonline 3024, 2019 (3) RCR (Criminal) 387; *Kalakoti Niranjan Reddy v. State of Andhra Pradesh,*[3] 2015 PLRonline 0007 (Andhra.).

5. Learned counsel for the petitioners submits that the Trial Court has wrongly and illegally dismissed the application of the petitioner for striking off the evidence of the complainant/respondent. The impugned order passed by the Trial Court is in contravention of the provisions contained in Section 145 of the N.I. Act. Learned counsel submits that once the Trial Court had fixed the case for cross-examination of the

complainant/respondent, the stage of Section 145(2) of the N.I. Act was already over and the Trial Court had reached beyond the stage of Section 145(2) of the N.I. Act.. This aspect has completely been ignored by the trial court while passing the impugned order.

6. I have heard learned Sr. counsel for the petitioners at length and given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

7. Before adverting to further, it would be appropriate to reproduce provisions of Section 145 of the N.I. Act which read as under:-

“145. Evidence on affidavit.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974.) the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions, be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.”

8. A bare perusal of the aforesaid provision makes it abundantly clear that the legislature has allowed the complainant to give his evidence by way of an affidavit during the course of trial in respect of offence punishable under Section 138 of the Act, by virtue of Section 145(1) of the Act. Section 145(2) of the Act mandates that the Trial Court may, on the application moved by the accused, summon the complainant for his cross-examination as to the effect contained therein. Section 145 of the N.I. Act, which seeks to attend a constructive purpose, should be read rationally. The purports and objects of the N.I. Act are for a fast and expeditious trial which is even otherwise a requisite condition for a criminal trial. It is needless to mention here that the N.I. Act is a special legislation and the provisions contained in a special statute have overriding effect over the provisions contained in a general statute. This makes it possible for the evidence of the complainant to be taken without presence of an accused being an essential prerequisite condition. Sections 143 to 147 were introduced in the Act by virtue of Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 which came into force w.e.f. 06.02.2003. According to Section 143, the offence under Section 138 of the Act is to be tried summarily which envisages fast and expeditious conclusion of a trial by the trial court. It is important to consider here that the nature of examination in each case is a different matter which has to be considered differently by the court in different circumstances. However, such a consideration has to be made keeping in view the provision of Section 145(1) and 145(2) of the N.I.Act and having regard to the object and purpose of the entire scheme of Sections 143 to 146 of the N.I. Act.

9. In the case of *Indian Bank Association* (supra) the Hon’ble Supreme Court has laid down the procedures to be followed by Subordinate Courts while dealing with the cases under Section 138 of the N.I. Act wherein it has been held as under:-

“16. We have indicated that under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the Court, which makes it clear that a complainant is not required to examine himself twice i.e. one after filing the complaint and one after summoning of the accused. Affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post summoning stage. In other words, there is no necessity to recall and re- examine the complaint after summoning of accused, unless the Magistrate passes a specific order as to why the complainant is to be recalled. Such an order is to be passed on an application made by the accused or under Section 145(2) of the Act suo moto by the Court. In summary trial, after the accused is summoned, his plea is to be recorded under Section 263(g) Cr.P.C. and his examination, if any, can be done by a Magistrate and a finding can be given by the Court under Section 263(h) Cr.P.C. and the same procedure can be followed by a Magistrate for offence of dishonour of cheque since offence under Section 138 of the Act is a document based offence. We make it clear that if the proviso (a), (b) & (c) to Section 138 of the Act are shown to have been complied with, technically the commission of the offence stands completed and it is for the accused to show that no offence could have been committed by him for specific reasons and defences.

21. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the Criminal Courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given :-

DIRECTIONS:

1) Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

2) MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.

3) Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.

4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re- calling a witness for cross-examination.

(5) The Court concerned must ensure that examination-inchief, cross-examination and re-

examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court."

10. Keeping in view the aforesaid propositions of law laid down by the Hon'ble Supreme Court, there is not an iota of doubt that under Section 145 of the N.I. Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry/trial or other proceedings in the Court. In case the complainant is required to be re-examined, the Court needs to pass a specific order either on the application under Section 145(2) of the N.I. Act or suo motu by the Court. Perusal of the aforesaid law laid down by the Hon'ble Supreme Court also makes it clear that after serving notice in terms of Section 251 of the Cr.P.C., upon an accused, the Trial Court shall fix the case for defence evidence, unless an application is made by the accused under Section 145(2) of the Act for recalling a witness for cross-examination. At the same time, it has been further directed that the concerned Magistrate must ensure that the procedure relating to examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. Thus, it is crystal clear that in case the complainant is required to be re-examined, the Court needs to pass a specific order either on the application under Section 145(2) of the N.I. Act or suo motu by the Court.

11. In the present case the Trial Court has rightly allowed the complainant for re-examination suo motu, keeping in view the peculiar facts and circumstances of the present case and the stakes involved therein. The Trial Court has rightly acted suo motu in view of the enunciation of law laid down by the Supreme Court in *Indian Bank Association* (Supra) and as such the application of the petitioners for striking off the evidence has rightly been dismissed. If the complainant is not allowed in the case at hand to file detailed affidavit, then the purpose and purport of the provisions contained in the N.I. Act would be rendered to be a nullity and the same would definitely prejudice the indefeasible rights of the complainant.

12. In view of the above, I find no merit in this petition which is hereby dismissed. SS