(2014) 05 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : C.R.M. No. M-12661 of 2014

Jay Switches (India) Private Limited APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 13-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 305, 319, 436, 437, 438
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 4 BC 707 : (2014) 3 RCR(Criminal) 761

Hon'ble Judges : Inderjit Singh, J

Bench : Single Bench

Advocate : Anurag Jain, Advocate for the Appellant; Subhash Godara, Addl. Advocate General and Jeevesh Bindal, Advocate for the Respondent

Final Decision : Allowed

Judgement

Inderjit Singh, J.—Petitioner Jay Switches (India) Private Limited through its authorized representative Jitender Taneja has filed this petition against State of Haryana and Tarun Bindal respondents u/s 482 Cr.P.C. for quashing of order dated 31.03.2014 passed by learned Judicial Magistrate Ist Class, Hisar in criminal complaint titled as Tarun Bindal v. Jai Switches Private Limited qua imposition of condition No. II. It is stated in the petition that petitioner company has been falsely implicated in the aforesaid case at the instance of the complainant. The facts as given in the petition are that respondent No. 2 filed a criminal complaint under the provisions of Section 138 of the Negotiable Instruments Act, 1881. The complainant in the complaint had arrayed the present petitioner as accused No. 1 and No. 2 on the basis of two different addresses. However, the fact remains that both accused No. 1 and No. 2 are one and the same entity. On 11.02.2006, learned JMIC, Hisar passed the summoning order against the petitioner company and was pleased to dismiss the complaint qua accused No. 3 to 6. Against partial dismissal of complaint, the complainant preferred revision petition before learned Addl. Sessions Judge, Hisar, who accepted the same partly and summoned accused No. 3 and for remaining accused, the petition was dismissed. It is further stated in the petition that Mr. P.C. Minda has been arrayed as accused No. 3 in the complaint and he being an old aged, infirm and suffering from serious diseases, moved an application for seeking exemption from personal appearance. The said prayer was granted by learned JMIC, Hisar vide order dated 11.02.2012. It is further stated in the petition that the trial in the case continued till 18.01.2012, when the learned trial Court had directed that the proceeding should start de-novo and in fact the same is being carried out. After initiation of de-novo trial, the complainant moved an application u/s 319 Cr.P.C. for summoning accused No. 4 to 6 and learned JMIC, Hisar was pleased to allow the same and have summoned them to face trial. Against the summoning order, those accused preferred quashing petition before this Court and this Court has been pleased to stay the operation. It is further stated in the petition that till today only part chief examination of the complainant has been recorded as on most of the occasions, the complainant has been absent. On 07.01.2014, the company passed a resolution dated 07.01.2014, whereby Jitender Taneja was appointed as new authorized representative of the company. Accordingly, on 19.02.2014, the petitioner company had filed an application for appointing an authorized representative. It is also stated in the petition that notice of the application was issued and after hearing other party, the trial Court was pleased to allow the application but has imposed the following conditions:-

"I. That all the proceedings taken before the appointment of Mr. Jitender Taneja applicant, against the accused company in presence of Mr. P.C. Minda shall not be set aside and shall be deemed to be taken in the presence of Mr. Jitender Taneja.

II. Mr. Jitender Taneja shall file a bond in the sum of Rs. 50,000/- with one surety in the like amount, undertaking to represent the company on each and every date and also given undertaking that he will not absent himself from the Court without its permission (this will curb the delay which may be likely to be caused due to absence of Jitender Taneja, the representative of the company)."

2. It is further stated in the petition that petitioner company is not aggrieved by condition No. I of the order dated 31.03.2014 but aggrieved by imposition of condition No. II. It is also stated in the petition that condition No. II is illegal, contrary to law and amounts to violation of the Code of Criminal Procedure 1973. The petitioner is a juristic and non-living person, being represented by an authorized representative but asking the representative to furnish bonds, amounts to issuance of direction to the company to furnish bonds and this condition is illegal and erroneous as there is no provision in the Cr.P.C. It is further stated in the petition that Sections 436 to 450 Cr.P.C. relate to these provisions. Section 441 Cr.P.C. relates to the provision of furnishing of bonds by an accused person and there is no provision for filing of such bonds by an authorized representative.

3. Notice was given and respondents appeared through their respective counsel and contested the petition and also filed replies.

4. In the reply by respondent No. 2, it is stated that condition Nos. I and II imposed by the trial Court are correct and as per law.

5. I have gone through the record and have heard learned counsel for the parties as well as learned State counsel.

6. First of all, I find that Section 305 Cr.P.C. deals regarding procedure to be adopted when corporation or registered society is an accused, which reads as under:-

"305. Procedure when corporation or registered society is an accused.

(1) In this section, "corporation" means incorporated company or other body corporate, and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

(2) Where a corporation is the accused person or one of the accused persons in an inquiry or trial, it may appoint a representative for the purpose the inquiry or trial and such appointment need not be under the seal of the corporation.

(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in subsection(3) shall not apply.

(5) Where a statement in writing purporting to be signed by the managing director of the corporation or by any person (by whatever name called) having, or being one of the persons having the management of the affairs of the corporation to the effect that the person named in the statement has been appointed as the representative of the corporation for the purposes of this section, is filed, the court shall, unless the contrary is proved, presume that such person has been so appointed.

(6) If a question arises as to whether any person, appearing as the representative of a corporation in an inquiry or trial before a court is or is not such, representative, the question shall be determined by the court."

7. I have gone through the provisions of Section 305 Cr.P.C., which deal with appointment of representative for the purpose of enquiry or trial. Clause 3 to Sub-section 305 sates that where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that thing shall be done in the presence of the representative etc. and any requirement that the accused shall be examined shall

be construed as a requirement that the representative shall be examined. Clause 4 of this Section states that where a representative of a corporation does not appear, any such requirement as is referred to in sub-section(3) shall not apply.

8. Therefore, the above laid procedure clearly shows that if any representative does not appear, then the condition that he shall be examined or anything is to explained to representative or to be read to him or evidence is to be taken in his presence, will not apply. It is nowhere written in the procedure that like an accused, bail bonds and surety bonds are to be taken or in his absence, non-bailable warrants be issued to procure the presence of the representative. It is also nothing in this provision that evidence must be recorded in the presence of representative or representative must be examined as is required for an accused. Therefore, in view of the specific provisions in the Cr.P.C., no bail bonds can be taken from the representative and his presence cannot be compelled on each and every date.

9. Learned counsel for the petitioner has relied upon the law laid by this Court in Dow Agro Science India Pvt. Ltd. v. CBI (decided on 19.08.2013) by this Court. In that case, the petition was allowed. The part of the impugned order whereby the representative of the Company was directed to furnish the bail bonds/surety bonds is set aside. Keeping in view the above discussion, I find that condition No. II cannot be imposed as per the provisions of Section 305 Cr.P.C. Therefore, condition No. II imposed in the impugned order dated 31.03.2014 is set aside. Further, if any order in consequence of noncompliance of condition No. II is passed, that is also to be treated as set aside.

Accordingly, the present petition stands allowed.

