

(2023) 05 DEL CK 0157

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2376 Of 2023, Criminal Miscellaneous Application No.8966, 8967 Of 2023

M/S Bharat Export Overseas & Ors

APPELLANT

Vs

State (Nct Of Delhi) & Anr

RESPONDENT

Date of Decision : 24-05-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 91, 311, 397(2), 482

Citation : (2023) 05 DEL CK 0157

Hon'ble Judges : Rajnish Bhatnagar, J

Bench : Single Bench

Advocate : Mohit Chaudhary, Kunal Sachdeva, Srishti Bajpai, Raj Kumar

Final Decision : Dismissed

Judgement

Rajnish Bhatnagar, J

1. The present petition has been filed under Section 482 Cr.P.C. by the petitioner with the following prayers:-

"a) Pass an order by setting aside the impugned order dated 16.01.2023 and 24.03.2023 passed in Complaint Case No. 8932/2016, by the Ld. Presiding Officer, Special Court, NI Act, Central District, Tis Hazari Court, Delhi, titled as "S. Swinder Singh vs M/s Bharat Exports Overseas & Ors" and proceedings emanating therefrom; and/or

b) Allow recalling of witness CW 1 for further cross examination/ re-examination in Complaint Case No. 8932/2016, passed by the Ld. Presiding Officer, Special Court, NI Act, Central District, Tis Hazari Court, Delhi, titled as "S. Swinder Singh vs M/s Bharat Exports Overseas & Ors"; and/or

c) Pass an order by setting aside the impugned order dated 28.03.2023 passed in CR. No. 117/2023, passed by the Ld. ASJ, Central District, Tis Hazari Court, Delhi, titled as "M/s Bharat Exports Overseas & Ors vs S. Swinder Singh"; and/or

d) Call for records of Complaint Case bearing No. 8392/2016 pending before Ld. Presiding Officer, Special Court, NI Act, Central District, Tis Hazari Court, Delhi, titled as "S. Swinder Singh vs M/s Bharat Exports Overseas &Ors"; and/or

e) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice."

2. It is submitted by learned counsel for the petitioner that the complaint was lodged against the petitioner only to extort money. It is further submitted that there are contradictions in the statements of CW-1, i.e., the respondent no.2 (herein). It is further submitted that DW-1, namely, Mahinder Nath Chandok, who is stated to be the agent of CW-1, accepted the payment on behalf of the respondent no. 2 (herein). It is further submitted that the petitioner has already paid the loan amount and, in this regard, the promissory note dated 17.10.2011 signed by the respondent no. 2 himself, which mentions 'received payment with interest' at the back of note, acknowledging the payment of Rs. 10,00,000/- has been paid by the petitioners.

3. In the instant case, for proper adjudication, it is necessary to look into to the orders dated 16.01.2023 and 28.03.2023.

4. The relevant portion of the order dated 16.01.2023 reads as follows:-

"I have perused the application under disposal and also perused the cross examination of CW -1 conducted on behalf of accused. I am of the view that there is no ground for recalling of CW -1 for further cross examination and application has been moved just to delay the case. Cross examination of CW -1 was completed and he was discharged on 23.10.2019. Present application has been moved on 17.10.2022 when the case was going on for hearing final arguments. It shows that this application under disposal was moved just to delay the case."

5. Further, the relevant portion of the order dated 28.03.2023 reads as follows:-

"15. At this stage, it is important to refer the observations made by the Hon'ble Supreme Court of India in Sethuraman vs. Rajamanickam, 2009 (5) SCC 153, wherein it was held:-

"5 Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application u/s 311 Cr. P.C., were interlocutory orders and as such, the revision against those orders was clearly barred u/s 397(2) Cr. P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques • were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary: This order did not, in any manner, decide anything finally. Therefore. both the orders, i.e. one on the application . u/s 91 Cr. P.C. for production of documents and other on the auplication u/s 311 Cr. P.C. for recalling the witness. were the

orders of interlocutory nature. In - which case. u/s 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment. is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."

16. Further in Mr. Situ Ramnath Shastri vs I.F.C.I. Factors' Ltd decided on 30th August, 2022 in CrI. M.C. No. 586/2021 by the Hon'ble High Court of Delhi, the following observations were made:

"12. The intent of section 311 Cr. P. C. is to empower the court to make a fair evaluation at every instance. The court has been entrusted with this authority so that justice be administered without being constrained by the specifics of the legislation. It makes no difference whether a witness has been cross-examined by the party seeking to recall them or whether all of the evidence has been closed or not. The question for the court is whether calling back such a witness and presenting evidence is necessary for a fair resolution of the case. This alone demonstrates how the preceding ruling on the application under Section 311 Cr. P.C. cannot be regarded as final. The court may permit a witness to be summoned if, at a later stage, it determines that recalling the witness was required for a just resolution of the matter.

It is trite law that an order passed under Section 311 Cr. P.C. is purely an interlocutory order and a revision against an interlocutory order is clearly barred under Section 397(2) Cr. P.C. Consequently, the revision petitions preferred before Id. ASJ were not maintainable and thus, the present petitions filed against the final outcome of the said revision petitions are again not maintainable."

17. In the light of above-mentioned precedents, this Court is of the considered opinion that the impugned order deciding the application u/s. 311 Cr. P.C. can not in any way affect the finality of the dispute between the parties and definitely the said order is interlocutory in nature. The said order is purely of interim nature and does not finally decide the lis between the parties. The impugned order does not result in culmination of proceedings between the parties.

18. Accordingly, present revision petition is not found maintainable against the order on the application u/s. 311 Cr. P.C. and is hereby dismissed."

6. Reliance can also be placed upon B.B. Lal Aggarwal vs. The State Govt of Delhi & Anr. (CrI. M.C. 953/2022, Judgment dated 04.04.2022) decided by the coordinate bench of this court, wherein, it was observed that no revision lies against an interlocutory order.

7. It is pertinent to note here that the promissory note dated 17.10.2011 which is annexed along with the present petition was not filed with the application which was moved by the petitioner before the Magistrate for recalling of CW-1 and the said application before the Magistrate was bereft of any details with

regard to any promissory note. On the top of that, before this Court also it is nowhere mentioned in the present petition as to how the petitioner now procured the promissory note dated 17.10.2011 by which he claims he had returned the amount to the respondent.

8. Therefore, in view of the above, I find no infirmity in the impugned orders dated 16.01.2023, 24.03.2023 and 28.03.2023 and the same are, therefore, upheld. The prayers are untenable in law. Hence, this Court does not deem it appropriate to issue notice to the respondents. Consequently, the present petitions are dismissed. No orders as to cost.

9. Nothing stated hereinabove shall tantamount to the expression of any opinion on the merits of this case.