

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

CRM-M-12799-2015

Date of decision: 23.4.2015

Vijay Singh Solanki

...Petitioner

Versus

Vishal Gupta

...Respondent

**CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.Tanmoy Gupta, Advocate for the petitioner

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**SNEH PRASHAR, J.**

1. The instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for setting aside the order dated 13.03.2015 passed by learned Additional Sessions Judge, Faridabad whereby the application under Section 311 Cr.P.C. filed by the petitioner was dismissed.

2. The brief facts of the case are that the petitioner had borrowed a sum of Rs.7,50,000/- from the respondent-complainant and issued a cheque bearing No.194003 dated 9.2.2008 for the said amount drawn on Hongkong and Shanghai Banking Corporation Ltd. But when the said cheque was presented in the Bank for encashment, it was returned for insufficiency of funds. The respondent -complainant filed a complaint under Section 138 of the Negotiable Instruments Act and the petitioner was convicted and sentenced by the learned trial Court.

3. The submissions made by Mr.Tanmoy Gupta, Advocate

have been heard.

4. It has been submitted by learned counsel for the petitioner that the learned Additional Sessions Judge has committed an error while dismissing the application of the petitioner for recalling the respondent-complainant for further cross-examination. He referred to Section 311 Cr.P.C. and submitted that the said section confers wide powers on the Court to summon any person as a witness or to recall and re-examine any person already examined at any stage of any inquiry, trial or other proceeding. The said provision further casts a duty upon the Court to summon and examine or recall and re-examine any such person, if his evidence appears to be essential for the just decision of the case.

Learned counsel asserted that due to negligence of the counsel for the petitioner, some material questions regarding advancement of loan by the complainant to the petitioner and issuance of cheques for discharging debts and liabilities could not be put to the complainant-respondent. If the queries are not clarified a serious prejudice will be caused to the petitioner. On account of the fault of the counsel, the litigant should not be left to suffer.

5. Undoubtedly, Section 311 Cr.P.C. confers wide discretionary power upon the court to summon/ recall/ re-examine any person, but such a discretion has to be exercised judiciously and not arbitrarily. The court is competent to exercise such power at any stage of the trial or proceedings and even *suo motu* if no such application is filed by either of the parties. However, the court must satisfy itself, that it was in fact

essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

6. In the present case, the petitioner has already been convicted and sentenced by the learned trial Court vide judgment/ order dated 19/20.10.2012 to undergo rigorous imprisonment for one year alongwith compensation of Rs.7,75,000 to be paid to the complainant-respondent.

The learned Additional Sessions Judge while dismissing the application under Section 311 Cr.P.C. has observed as under:-

“Now applicant-accused wants to cross-examine complainant on the question of valid liability. But he has already examined sufficiently. He had moved similar application for tendering two judgments which was allowed. He did not seek permission to lead this evidence to be led in additional evidence. Now he cannot be allowed to build a fresh case. Hence, I find no merit in this application. Hence, rejected.”

7. No adversity or perversity could be demonstrated by learned counsel for the petitioner in the impugned order of learned Additional Sessions Judge. The respondent-complainant was cross-examined by the counsel for the petitioner at length before the trial Court. At no stage before the trial Court, the petitioner either raised any question with regard to improper examination of the complainant-respondent, or moved any application for recalling him. Now at the appellate stage, the petitioner has moved an application under Section 311 Cr.P.C. to recall

the respondent-complainant for further cross-examination, it appears that only to delay the proceedings, the application had been filed.

8. Thus, finding no ground for intervention in the impugned order of the learned trial Court, the present petition being devoid of any merit is dismissed in limine.

23.4.2015  
gsv

**(SNEH PRASHAR)**  
**JUDGE**