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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-450 of 2015****Date of decision: January 07, 2015**

Satnam Singh

.....Petitioner

Versus

ICICI Bank Ltd.

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA**Present:** Mr. Rajesh Gupta, Advocate
for the petitioner.**SABINA, J**

Petitioner has filed this petition challenging the order dated 01.10.2014, whereby application moved by the complainant under Section 311 of Code of Criminal Procedure, 1973 ('Cr. P.C.' for short), was allowed.

Learned counsel for the petitioner has submitted that the trial Court has made reference to the order dated 11.04.2014 whereby application under Section 311 Cr. P.C. was allowed, whereas application in question was not allowed on the said date.

Section 311 Cr. P.C. reads as under:-

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, Court has ample power to summon any witness during trial, if his/her evidence

appears necessary for the just decision of the case.

Impugned order reads as under:-

“Ld. Counsel for the complainant Shri Alok Mohindra, Advocate has moved an application to allow the cross examination of CW2 Samir Talwar who has been examined in compliance of the order dated 11.04.2014 whereby the application u/s 311 Cr. P.C. of the complainant was allowed. Ld. Counsel for the accused has resisted this application orally. I have gone through the record carefully. The affidavit of CW2 Samir Talwar has already been tendered by the Ld. Counsel for the complainant in his examination in chief. He remained to be cross examined. As such this application is allowed. Now the case is adjourned to 17.10.2014 for cross examination of CW2 Samir Talwar.”

In the present case, respondent has filed the complaint against the petitioner under Section 138 of Negotiable Instruments Act, 1881 qua dishonor of cheque in question. During the pendency of the trial, respondent moved an application under Section 311 Cr. P.C.. The case of the respondent was that Rajesh Kumar had appeared as CW1 and had tendered various documents on record. However, some of the documents could not be properly proved on record. In order to prove the said documents, respondent sought permission to examine Samir Talwar, Regional Debt Manager (RDM) of ICICI Bank.

Petitioner filed reply to the said application.

In Para-4 of the petition, order dated 11.04.2014 passed by the trial Court has been reproduced. As per the same, the case was adjourned to 26.04.2014 for arguments on an application under Section 311 Cr. P.C.

Thus, it is evident that the trial Court while passing the

impugned order has erred in observing that the application filed

under Section 311 Cr. P.C. was allowed on 11.04.2014. During the course of arguments, it has transpired that the case is listed before the trial Court for evidence of the complainant-respondent. The witness sought to be examined by the respondent is a Bank official and has to prove the documents issued by the Bank before filing of the complaint. It is evident that the witness sought to be examined by the respondent, was necessary for the just decision of the case. Moreover petitioner will get an opportunity to cross-examine the witness. The documents sought to be proved on record by witness Samir Talwar are already on record. Although, the impugned order passed by the trial Court suffers from factual error and is not a reasoned order, this Court has gone through the record of the case and is convinced that the examination of Samir Talwar now sought to be examined as a witness, is necessary for the just decision of the case. Hence, it would not be in the interest of justice to remand the matter back to the trial Court for a fresh decision as it would merely delay the trial. Moreover, petitioner will not suffer any prejudice as the documents sought to be proved on record are already on the file and petitioner will get an opportunity to cross-examine the witness-Samir Talwar, whose affidavit is already tendered on record.

In the facts and circumstances of the present case, no ground for interference by this Court, is made out.

Dismissed.

January 07, 2015
m.singh

(SABINA)
JUDGE