

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR no. 3885 of 2014(O&M)
Date of Decision : 28.05.2015

Har Gobind

....Petitioner

Versus

Hari Om and another

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr J.S.Yadav, Advocate for the petitioner

None for the respondents

MAHESH GROVER, J.

There is no representation on behalf of the respondents.

The petitioner impugns the order dated 5.11.2014 vide which the application filed by the respondent -complainant under Section 311 CR.P.C has been allowed in proceedings under Section 138 of Negotiable Instruments Act.

Learned counsel for the petitioner contends that once the witness had been examined and cross-examined at length there is no occasion for the said witness to be recalled for further examination. He further contends that ingredients of Section 311Cr.P.C do not stand satisfied and the Court does not give sufficient reasons to exercise this power.

I have heard learned counsel for the petitioner and have perused the impugned order. It would be necessary to extract the relevant portion of the order which is as under:-

“3. Notice of the application was given to the accused and reply to the present application was filed. In reply

it is submitted that the application is baseless, frivolous and sheer abuse of process of law. It is further submitted that the witness CW2-Jaideep Sharma has been thoroughly examined by the accused counsel and therefore, there is no need to recall the said witness at this stage. On merit, it is submitted that the said witness has been won over by the accused and accused compelled and persuaded Jaideep Sharma to file a complaint under the Consumer Protection Act against the complainant, his school and other staff members only to harass the complainant and to make the former statement made before the Court pressurizing him to give false statement before the Court. It has been held in **Himanshu Singh Sabarwal vs. State of M.P. & Ors 2008 (2) RCC 269** Section 311 Cr.P.C gives wide discretion to the court to summon and examine any person as the exigencies of justice required. It was further held that the object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution and the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. In the present case, new facts have come to the light regarding the deposition of CW 2 Jaideep sharma and the circumstances under which the evidence was given. The documents annexed with the application corroborates the averments made in the application. Therefore, in these circumstances, it becomes necessary to recall the said witness for further examination and to confront him with the documents placed on record. No prejudice will be

caused to the accused if the said witness is summoned and examined by the complainant.

In view of the above discussion and in the interest of justice, the instant application is hereby allowed.”

In the considered view of the Court even though powers under Section 311 Cr.P.C are vast enough to enable the Court to recall a witness for further testimony but such an exercise of power has to be supported by sufficient reasons. The Court has to apply its mind to the language of the Section and facts of the case to reconcile with the facts of the case in order to evolve a sustainable reasoning in the event of judicial review. Section 311 Cr.P.C is extracted herebelow:-

“Section 311 Cr.P.C 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.”

From the aforesaid it becomes evident that the scope of Section 311 Cr.P.C is confined to recall of a witness if further examination is necessary for the just and proper adjudication of the matter. The impugned order passed by the Court of the Judicial Magistrate Ist Class is silent in this regard. It does not address the core issue as to how recall of the witness is essential for just and proper adjudication of the matter. Finding no

justifiable reasons manifest in the impugned order, I would have no hesitation to quash the same. Ordered accordingly. Revision petition is accepted and the matter is remitted back to the learned Trial Court for decision afresh in the light of what has been observed above.

May 28, 2015
rekha

(Mahesh Grover)
Judge