

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR no. 3888 of 2014(O&M)

Date of Decision : 28.05.2015

Rattan Lal

....Petitioner

Versus

Rakesh Mohan 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:-

“6. From the averments made in the application

and from the perusal of the Annexures attached with the

application, it is clear that CW 3 – Jaideep Sharma has given representation/complaint against complainant Rattan Lal and his sons Lavinder and Hargobind to various authorities. In the Annexure P-1 which is the complaint IG-Rewari by CW3 – Jaideep Sharma, there is specific mention of the alleged cheques which are subject matter of dispute in the present case also and there is mention of the cases u/s 138 N.I. Act, which are pending in this Court. It is further stated in Annexure- P1 that CW 3- Jaideep Sharma had deposed as a witness under threat from the complainant Rattan Lal. This fact of deposition under threat by CW 3- Jaideep Sharma is also substantiated by the application of CW-3 Jaideep Sharma filed in this court on 28.7.2014 through his counsel for initiating criminal proceedings against the complainant and his son Lavinder Singh from criminal intimidation and for 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 3 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