

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

CRM No.M-22921 of 2016 (O&M)

Date of Decision: July 12, 2016

Sarita Jain

...Petitioner

VERSUS

HDFC Bank

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Akashdeep Singh, Advocate
for the petitioner.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 18.04.2016 passed by learned Judicial Magistrate Ist Class, Rohtak vide which the application under Section 311 Cr.P.C. filed by the respondent was allowed and judgment dated 06.06.2015 passed by learned Sessions Judge, Rohtak, vide which the revision filed by the petitioner was dismissed.

Heard.

From the record, I find that an application has been filed before learned JMIC, Rohtak under Section 311 Cr.P.C. by the respondent for leading additional evidence. It is stated in the application that two complaints titled as HDFC Bank Ltd. vs. Sanjay Jain and HDFC Bank Ltd. vs. Sarita Jain, were pending and in both the complaints, accused Sanjay

and Sarita Jain are husband and wife and due to inadvertence, the copy of

the notice addressed to Sanjay Jain has been wrongly tendered in the case HDFC vs. Sarita Jain and the notice addressed to Sarita Jain has been wrongly tendered in the case of HDFC vs. Sanjay Jain.

At the time of arguments, learned counsel for the petitioner did not contest this part of the application.

Again, it is stated in the application that the examination-in-chief of the complainant witness i.e. Mohinder Sharma was tendered in the case on 11.03.2015 and the power of attorney in favour of the said witness was expired later on. However, on the date of examination-in-chief, the power of attorney was effective, which was tendered into evidence but the accused did not cross examine the witness despite availing various opportunities and cross examined the witness i.e. Mohinder Sharma on 25.01.2016 and 03.02.2016. The applicant wants to produce the power of attorney which was given in continuity to the previous power of attorney.

Learned counsel for the petitioner did not press qua this part of the application also.

Learned counsel for the petitioner only objected to allowing of the application regarding producing of the power of attorney executed in favour of Mohinder Sharma along with other power of attorney given to the person, who executed power of attorney in favour of Mohinder Sharma. He argued that this evidence cannot be allowed as it amounts to filling up of lacuna.

At the time of arguments, learned counsel for the petitioner admitted that this evidence is essential but he argued that it cannot be allowed now as it amounts to filling up of lacuna.

After going through the record and after hearing learned counsel

for the petitioner, I find that the Court has ample powers to allow additional evidence, which is essential and necessary for the just decision of the case.

Filing of power of attorney executed by a person in favour of the person, who gave the power of attorney to Mohinder Sharma, is essential and necessary, therefore, learned Magistrate has not committed any illegality while allowing this application. Even, additional evidence can be allowed in the appeal under Section 391 Cr.P.C., if it is necessary and essential for the just decision of the case. Even if it is taken that this is a lacuna or the complainant could not file the application earlier, it is no ground to dismiss the application under Section 311 Cr.P.C.

In view of the above discussion, I find that the order and judgment passed by the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in the present petition, the same is dismissed.

July 12, 2016
Vgulati

(INDERJIT SINGH)
JUDGE