

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-24407-2016 (O&M)
Decided on: July 21, 2016.

Madan Lal

.. Petitioner(s)

VERSUS

Rakesh Kumar

.. Respondent(s)

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CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

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PRESENT Mr.Salil Bali, Advocate,
for the petitioner.

M.M.S. BEDI, J. (ORAL)

Counsel for the petitioner claims that application under Section 311 Cr.P.C., to examine Bishamber Kumar as a defence witness has been dismissed by the trial Court causing prejudice to the defence. An attempt had been made to summon the said witness but his presence could not be secured.

Application under Section 311 Cr.P.C., has been dismissed, inter alia, on the ground that he had not come present in the Court despite repeated summoning.

Counsel for the petitioner submits that the next date of hearing before the trial Court is 27.7.2016 and the petitioner can produce said Bishamber Kumar in the Court on next date of hearing.

With the assistance of counsel for the petitioner, I have gone through the cross-examination of the complainant in which defence has suggested to the complainant that blank cheque had been given to the complainant by Bishamber Kumar. I have also gone through the application

19.8.2015, wherein petitioner had explained that earlier Bishamber Kumar could not be served but subsequently he had agreed to depose as a defence witness.

Taking into consideration the fact that specific defence has been raised by the petitioner as is apparent from the cross-examination in context to some transactions of the complainant with Bishamber Kumar and the application under Section 311 Cr.P.C., having been dismissed on the ground that Bishamber Kumar could not be served and opted not to appear, in the interest of justice, this petition is disposed of in limine with a direction that in case the arguments have not been heard in the case and the defence witness Bishamber Kumar is in attendance in the Court on the next date of hearing i.e. on 27.7.2016, it will be open to the petitioner to move a fresh application under Section 311 Cr.P.C. as the said provision enables a Court at any stage of the trial, to examine a person summoned as a witness or examine a person **in attendance** if his evidence appears to be essential to the just decision of the case. In case any such application is filed by producing Bishamber Kumar, it will be open to the trial Court to consider the subsequent circumstances and re-adjudicate the application under Section 311 Cr.P.C. and pass any appropriate order. It will also be open to the trial Court to impose any reasonable cost as per the provisions of Explanation 2 to Section 309 Cr.P.C. and permit Bishamber Kumar to appear as a witness with a fair opportunity to the complainant to cross-examine him.

The petition is disposed of, accordingly, at this stage, without prejudice to the other rights of the petitioner. It is expected that in

trial Court shall pass a speaking order in accordance with the requirements of Section 311 Cr.P.C. It is made clear that in case of absence of Bishamber Kumar on next date of hearing before the trial Court, this petition will be deemed to have been dismissed.

(M.M.S. BEDI)
JUDGE

July 21, 2016.
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