

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

CRM-M-44039-2016

Date of decision: 9.12.2016

Sukhwant Singh

...Petitioner

Versus

Gurdev Singh

...Respondent

**CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.DS Gandhi, Advocate for the petitioner

\*\*\*\*

**SNEH PRASHAR, J.**

The instant petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for setting aside the order dated 25.10.2016 (Annexure P3) passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Amritsar whereby the application under Section 311 Cr.P.C. filed by the petitioner was dismissed.

The submissions made by Mr.DS Gandhi, Advocate representing the petitioner have been heard.

It is submitted by learned counsel for the petitioner that learned Judicial Magistrate, 1<sup>st</sup> Class has committed an error while dismissing the application of the petitioner for recalling the respondent-complainant for further cross-examination. He referred to Section 311 Cr.P.C. and submitted that the said section confers wide powers on the Court to summon any person as a witness or to recall and re-examine any person already examined at any stage of any inquiry, trial or other

proceeding. The said provision further casts a duty upon the Court to summon and examine or recall and re-examine any such person, if his evidence appears to be essential for the just decision of the case.

Learned counsel asserted that some material questions regarding freight of goods, income tax returns and the complete deal that had taken in front of the power of attorney holder, had later on come to the knowledge of the petitioner and therefore could not be put to Charan Singh, power of attorney of the complainant-respondent, when he stepped into the witness box. If the queries are not clarified a serious prejudice will be caused to the petitioner. The fault was on part of the counsel, so the petitioner should not be left to suffer.

5. Undoubtedly, Section 311 Cr.P.C. confers wide discretionary power upon the court to summon/ recall/ re-examine any person, but such a discretion has to be exercised judiciously and not arbitrarily. The court is competent to exercise such power at any stage of the trial or proceedings and even *suo motu* if no such application is filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

6. In the present case, while dismissing the application under Section 311 Cr.P.C. of the petitioner vide order dated 25.10.2016, learned Judicial Magistrate has observed as under:-

“A perusal of the file reveals that the accused applicant had earlier moved an application dated

28.03.2016 under Section 311 Cr.P.C. for calling complainant Gurdev Singh himself in evidence. The said application was withdrawn by the accused on 13.10.2016. Further, the accused – applicant has failed to prove that as to how the re-examination of said witness is necessary. The contradiction with regard to presence of complainant in India will have no bearing on the facts of the case. It is an admitted fact that the present complaint is being pursued by the complainant through his power of attorney holder, Charan Singh s/o Natha Singh, which is permissible as per the provisions of the Act. Moreover, the accused has already closed his oral defence evidence and the case is now fixed for documentary defence evidence or for arguments. The accused- applicant has failed to assign any reason as to why the said application has been moved at this belated stage.

No adversity or perversity could be demonstrated by learned counsel for the petitioner in the impugned order of Judicial Magistrate. The complaint was being pursued by the complainant through his power of attorney holder Charan Singh. He was cross-examined by the counsel for the petitioner at length before the trial Court. The petitioner had moved an application under Section 311 Cr.P.C. to recall the respondent-complainant for further cross-examination which he withdrew and then

filed the instant application. Apparently, it is only to delay the proceedings that too after he himself had also led the evidence, the application had been filed.

Thus, finding no ground for intervention in the impugned order of the learned trial Court, the present petition being devoid of any merit is dismissed in limine.

9.12.2016

gsv

**(SNEH PRASHAR)**  
**JUDGE**

**Whether speaking / reasoned?****Yes / No****Whether reportable?****Yes / No**