

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

CRR No.965 of 2016

Date of Decision: March 10, 2016

Banwari Yadav

...Petitioner

Versus

Harjinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Sheena Khanna, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

In a private complaint preferred by Harjinder Singh-complainant now respondent against Banwari Yadav, the present petitioner, under Section 138 of Negotiable Instrument Act (for short, 'the Act') an application under Section 311 Cr.P.C. was moved for allowing additional evidence. The same stood allowed vide order dated 10.02.2016 by the Court of learned Judicial Magistrate 1st Class Shaheed Bhagat Singh Nagar. Against this order, the accused-present petitioner has come up in this revision challenging the allowing of application by the trial Court.

Going through the arguments, no doubt, Section 311 Cr.P.C. bestows upon the Court unbridled powers to summon material witness or examine any person or recall or re-examine any person already examined provided evidence appears to the Court to be essential for just decision of the case. There is no rider laid down in the exercise of these powers except that it should be judiciously exercised to advance

the cause of justice by which a Court can be properly assisted for judicious appreciation of the evidence and the adjudication of the case to meet the ends of justice. The grouse of the petitioner in allowing this application, whereby, the complainant has prayed for examination of one witness Kashmir Singh to produce the document pertaining to the ownership of Kashmir Singh regarding the property in question. The learned trial Court has come to the conclusion that the same was essential for just and proper decision of the case and, thus, to do substantial justice has allowed the same subject to payment of ₹2000/- as costs. Though, there has been different views of various Courts over the very maintainability of revision against an order passed under Section 311 Cr.P.C, however, in the light of the analogy drawn from Apex Court's views laid down in **Amar Nath and others vs. State of Haryana and others 1977 (SC) 2185; S. Kappuswami Rao vs. The King 1949 AIR (FC) 1; V.C. Shukla vs. State through CBI 1980 AIR (SC) 962; Madhu Limaye vs. State of Maharashtra 1978 AIR (SC) 47** since such an order cannot be termed to be purely an interlocutory order, therefore, revision is certainly maintainable. However, having regard to the fact that the impugned order has been passed by the learned Judicial Magistrate 1st Class and, therefore, to the mind of this Court the revisionist ought to have invoked the jurisdiction of the Sessions Court under the provisions of Section 397,399 Cr.P.C. No doubt, even this Court has power to exercise revisional jurisdiction under Section 401 Cr.P.C. but it needs to be asserted here that the Court should discourage such practice of filing revision before this Court when even the same can be preferred before the Sessions Court else this Court would be flooded with such petitions and, thus, for the sake of semblance of judicial decorum and discipline it needs to be initiated from the Court of lowest hierarchy.

Thus, in the totality of what has been detailed and discussed above without adverting anything on the merits of the revision the present revision petition stands dismissed. However, holding out that the revisionist shall be at liberty to invoke the jurisdiction of the appropriate Court under Section 399 Cr.P.C. Thus, the present petition stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

March 10, 2016
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