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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No.15487 of 2016
Date of Decision: 21.11.2017

M/s Shobit Mallebles

..... Petitioner

Versus

M/s KLMN Enterprises

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Kanwal Goyal, Advocate,
for the petitioner.

Mr. Rajiv Chug, Advocate,
for the respondent.

SUDIP AHLUWALIA, J. (ORAL)

The challenge in this petition is to the order passed by the Ld. Judicial Magistrate Ist Class, Jalandhar, on 19.04.2016, vide which the petitioner's application under Section 311 of the Code of Criminal Procedure for permission to recall the complainant for further cross-examination was rejected, *inter alia*, with the following observations-

“Section 311 Cr.P.C provides that any court may summon any person as a witness or recall or re-examine any person already examined if his evidence appears to it to be essential to the just decision of the case. Present case is pending for arguments since 23.03.2016. Perusal of the record shows that CWI Mandeep Nanda in his examination-in-chief had

produced on record all the documents alongwith the account statement on 15.07.2013. The cross-examination of the complainant has been conducted on 04.10.2014, 04.11.2014, 03.12.2014 and 09.01.2015. The accused had ample opportunity to cross-examine the complainant on the documents/account statement which were already placed on file. No reasonable ground has been furnished by the accused for not cross-examining the complainant on the documents which were already on file. Merely alleging that other cases have been filed on the same account statement is no ground to recall the CW1 Mandeep Nanda for cross-examination. Therefore, there is no sufficient ground to recall the complainant for cross-examination. Therefore, there is no sufficient ground to recall the complainant for cross-examination.”

2. Ld. Counsel for the petitioner submits that at a later stage, certain facts have come to the knowledge of his client that the very same account books relied upon by the complainant in his evidence would also go to show that money was allegedly lent to as many as 45 other separate parties under the same entries used against the petitioner/accused.

3. As such, just one opportunity to confront the complainant with these facts which have subsequently become known to the petitioner has been sought and on 06.05.2016. His Counsel had even made an offer before the Court that the petitioner is ready to pay adequate compensation to the respondent/complainant at this belated stage to recall him for further cross-examination.

4. The Ld. Apex Court in the case of “**P.Sanjeeva Rao Vs. State of A.P.**”, **2012 (3) R.C.R. (Criminal) 653** in relation to the object behind

Section 311 of the Code of Criminal Procedure, in allowing the prayer to recall of certain prosecution witnesses for further cross-examination on behalf of the accused had observed, *inter alia*,-

“The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of enquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the Section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.” (Emphasis added).

5. In the given circumstances, this Court is of the opinion that one opportunity can be granted to the petitioner to confront the complainant for further cross-examination *vis-a-vis* the account books led into evidence from his side. However, such cross-examination shall be limited to that question only. The petitioner/accused shall in advance take appropriate

steps to ensure that the concerned account books are got produced before the Ld. Trial Court on or before the date of such cross-examination, and he shall thereafter not seek any more opportunity to lead any further additional defence evidence from his side. Compensatory costs amounting to ₹15,000/- (Rupees Fifteen Thousand Only) are in addition awarded in favour of the respondent.

6. Disposed off.

7. The Ld. Trial Court shall make an endeavour to complete the resumed cross-examination preferably within three weeks from the date of communication of this order and the original criminal complaint shall be decided finally preferably within a period of two months thereafter.

21.11.2017

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/ reasoned : Yes/ No

2. Whether reportable : Yes/ No