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

CRM-M No.14482 of 2018
Date of Decision: 27.04.2018

Sushil Kumar

.....Petitioner

Vs

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Prashant Bansal, Advocate
for the petitioner.

Mr. Randhir Singh Thind, D.A.G., Punjab.

RAJ MOHAN SINGH, J.(Oral)

1. On 06.04.2018, following order was passed:-

“Learned counsel for the petitioner contends that complete testimony of PW4 is very material for just decision of the case as the witness was the attesting witness to agreement to sell allegedly executed between the petitioner and the complainant along with his brother. Though on three occasions i.e. 15.09.2017, 17.10.2017 and 05.12.2017, the witness could not be cross-examined by learned counsel for the petitioner and cross-examination was treated to be nil.

Learned counsel further contends that cross-examination of the said witness is very material and it will go to the roots of the case for

which indulgence of the Court can be sought under Section 311 Cr.P.C.

Notice of motion for 27.04.2018.”

2. Petitioner is accused in the aforesaid case. His counsel could not cross-examine the witness i.e. PW4 on three occasions and the cross-examination of the witness was treated to be nil.

3. PW4 is the attesting witness to the agreement to sell allegedly executed between the petitioner and the complainant along with his brother. The cross-examination of the witness is necessary for just decision of the case.

4. It is a settled principle of law that the Court becomes *functus officio* only after pronouncement of the judgment. The powers of the Court cannot be guided by any restrictive mechanism, if evidence sought to be adduced is in the opinion of the Court would serve as a helpful tool in arriving at correct decision of the case.

5. As per ratio of **Hanuman Ram v. State of Rajasthan and ors., AIR 2009 SC 69** and **Hoffman Andreas v. Inspect of Customs, Amritsar (2000) 10 SCC 430**, it can be held that powers under Section 311 Cr.P.C. can be exercised to prevent failure of justice on account of mistake of either of the party to bring on record valuable evidence or leaving an ambiguity in the statements of witnesses. It is not only the prerogative of the

Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties. The Court could adopt latitude and liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code.

6. In view of above, I deem it appropriate to grant one last opportunity to the petitioner to cross-examine PW4.

7. Learned counsel for the petitioner is ready to deposit costs of adjournment/litigation to the tune of Rs.5000/- to be deposited with State Legal Services Authority.

8. In view of aforesaid, impugned order dated 18.03.2018 passed by Judicial Magistrate Ist Class, Rajpura is set aside, subject to payment of costs of Rs.5000/- to be deposited with State Legal Services Authority, Rajpura.

9. Payment of costs shall be the condition precedent for granting indulgence by the trial Court.

10. Normal consequences to follow.

27.04.2018
jyoti

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No