

**201/7 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision: 07.08.2018

(I) CRM-M-35947-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(II) CRM-M-39984-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(III) CRM-M-39985-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(IV) CRM-M-39986-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(V) CRM-M-39987-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(VI) CRM-M-39988-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

(VII) CRM-M-39188-2013(O&M)

Harmehtab Singh Rarewala	...	Petitioner
	Versus	
Gaurav Jain and another	...	Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. Aalok Jagga, Advocate

for the petitioner (In all petitions).

Mr. Davinder Dhillon, Advocate for
Mr. P.S. Dhaliwal, Advocate
for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

This order shall dispose of above said seven petitions. Although, the seven cases are filed separately, however, the facts involved in these petitions are similar and identical. For the purpose of reference, the facts as mentioned in CRM-M-35947 of 2013 are taken by the Court.

Prayer in this petition is for challenging the order dated 19.10.2012 (Annexure P-5); passed by the Judicial Magistrate 1st Class, Ludhiana, in a complaint titled as Harmehtab Singh Vs. Gaurav Jain and others; filed under Section 138 of the Negotiable Instruments Act, 1881, whereby the application dated 05.01.2011 (Annexure P-2) filed by the present petitioner under Section 311 Cr.P.C., for leading additional evidence for examining witnesses and production of the record was rejected.

The brief facts of the case are that the petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, against the respondent No.2, in the year 2006. It was alleged in the complaint that accused No.1 was running business under the name and style of M/s Gaurav Jain and Company at Ahmedgarh. The complainant is an agriculturist and he owns land at Rara Sahib. The accused had business dealing with the complainant. The accused took a loan amounting to Rs.63,00,000/- on 03.02.2006 from the complainant and promised to return the same up to 01.05.2006. It was further alleged that in order to discharge his legal liability to repay the said loan amount of Rs.63,00,000/-, respondent No.1 had issued seven cheques bearing No. 483273, 483274, 483275, 483276,

483277, 483278 and 483279 of Rs.9,00,000/-, all drawn on Oriental Bank of Commerce, Branch Ahmedgarh, from account No.632 of the firm M/s Gaurav Jain and Company, Ahmedgarh. When cheque No. 483273 dated 01.05.2006 amounting to Rs.9,00,000/- was presented to the banker of respondent No.1, then the same was dishonoured with the remarks "Exceeds Arrangement". After the cheque issued by respondent No.1 was dishonoured, then the petitioner served a legal notice dated 10.06.2006 upon respondents; as required under the mandatory provisions of law. However, despite that, the payment was not made; leading to filing of the complaint against the respondents. During his evidence, the complainant examined himself as a witness besides the other witnesses. However, before completion of his evidence, the petitioner moved an application dated 05.01.2011 under Section 311 Cr.P.C.. It was averred in the application that qua the above said loan, the respondents had executed an agreement dated 03.02.2006; on a stamp paper which was sold by stamp vendor-Sh. Irshad Ali Khan, undertaking the repayment of the loan to the petitioner. The said agreement is signed by one Kulwinder Singh as witness. Hence, it was prayed that the petitioner be permitted to tender in evidence, the said agreement and further to examine the above said two witnesses, to prove that the respondent had issued cheques in discharge of his legally enforceable liability.

The trial Court dismissed the application vide impugned order dated 19.10.2012. While dismissing the application, the trial Court has recorded that since the agreement in question was in full knowledge of the petitioner and he has not produced the same in evidence at the earlier stage, therefore, he was trying to fill up the lacuna left in the case. Secondly, it

was observed that the petitioner has not even mentioned name of the witnesses in the list of witnesses, therefore, he could not be permitted to lead this evidence, under the provision of Section 311 of Cr.P.C.

Learned counsel appearing for the petitioner has submitted that the documents sought to be produced and the witnesses sought to be examined by the petitioner are only in line with the case of the petitioner. In the main complaint, it is alleged that money was taken by the respondents; as a loan on a specified date. The agreement also mentions the same date. Still further, it is submitted that the agreement is duly signed by the respondent and notarized by the Notary Public and the petitioner could not have fabricated the same just to fill up the alleged lacuna; as observed by the trial Court. Still further, it is contended that merely the names of the witnesses do not find mention in the list of witnesses, cannot be the reason for the trial Court not to permit the examination of witnesses under Section 311 Cr.P.C. To support his contention, learned counsel for the petitioner has relied upon the judgment of the Supreme Court in **Natasha Singh Vs. CBI 2013(3) R.C.R. (Criminal) 368**; **P. Chhaganlal Daga Vs. M. Sanjay Shaw 2004 SCC (CrI) 183**. He further relied upon the judgments of this Court in **Jagjit Singh Vs. State of Punjab and another, 2012(2) R.C.R. (Criminal) 632** and **Vinod Kumar Vs. State of Punjab, 2010(3) Law Herald 2158**.

While relying upon these judgments, counsel for the petitioner has submitted that the only scope for inquiry by the Court in exercise of powers under Section 311 Cr.P.C. could be whether the documents are necessary for the just decision of the case or not. While relying upon the judgments, counsel further submitted that it is totally immaterial whether the

witnesses, which were sought to be examined, were in the list of witnesses or not.

Learned counsel appearing for the respondents has submitted that the petitioner has tried to fill up the lacuna which was left in his evidence. It is further contended that the petitioner has fabricated the said agreement subsequently, just to support his case.

Having heard learned counsel for the parties and perused the case file, this Court is of the considered opinion that the arguments raised by the learned counsel for the petitioner, deserve to be accepted. The present application has been moved by the petitioner under Section 311 Cr.P.C. For ready reference Section 311 Cr.P.C. is reproduced here under:-

“311. Power to summon material witness, or examine person present.--

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

A bare perusal of this Section shows that the powers conferred upon the Court under Section 311 Cr.P.C. are wide enough but discretionary. However, like any other judicial discretion, the discretion under Section 311 Cr.P.C. also has to be exercised by the Court on sound judicial principles. The Supreme Court has amply clarified in the judgments relied upon the counsel for the petitioner, that if the documents sought to be produced on record and the witnesses sought to be examined are relevant for just decision of the case, then mere fact, that the documents were not tendered earlier or the witness was not examined earlier, is no ground to deny the permission to examine a witness or to tender a document.

Otherwise also, the trial Court is required to see, while exercising

discretion under Section 311 Cr.P.C., only one factor, namely, whether the evidence sought to be produced is necessary for just decision of the case or not. Whether the requirement of justness of decision would lead to filling up the alleged lacuna left in a case, is totally immaterial, while considering the matter under Section 311 of Cr.P.C. Although the Court is to weigh the material on the alter of it being essential for just decision of case on one hand and the prejudice to the defense of the accused on the other hand, since no prejudice to the defense of the accused is also part of the justness of the decision, but mere fact that some lacuna be filled by such evidence, is not the criterion for Section 311 of Cr.P.C. Similarly, the other reasoning given by the trial Court, wherein, it has said that the witnesses could not be permitted to be examined because the names of these witnesses was not be mentioned earlier is also fallacious. A bare perusal of Section 311 of Cr.P.C. shows that the power under Section 311 Cr.P.C. is not restricted for examination or re-examination of the witnesses who were originally cited by the complainant or who were examined before the Court earlier. While exercising its power, the Court can order examination of any person or witness, deemed appropriate by it provided it is essential for just decision of the case.

Hence, either of the grounds mentioned by the trial Court while rejecting the application is not sustainable. Otherwise also, a bare perusal of the alleged agreement, which is sought to be placed on record and proved by the petitioner in the case, shows that this document is duly signed by the respondent. Therefore, prima facie, contention of the respondents that the document is forged, cannot be accepted. Once permitted to be led in evidence, the respondents shall be at full liberty to test the veracity and authenticity of the document and to put the complainant to strict cross-examination on this aspect.

In view of the above, all the aforesaid petitions are allowed. The

impugned orders dated 19.10.2012 are set aside. The applications moved by the petitioner under Section 311 Cr.P.C. for leading additional evidence are ordered to be allowed.

(RAJBIR SEHRAWAT)
JUDGE

07.08.2018
Hemlata

Whether speaking/reasoned	Yes
Whether reportable	Yes