

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-34372 of 2015

Date of Decision: 10.09.2018

Sat Pal

...Petitioner(s)

Versus

Karnal Central Cooperative Bank Limited through its Manager, Branch
office at Taroari, District Karnal

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Rajesh Gupta, Advocate
for the petitioner(s).

Mr. Sachin Gupta, Advocate
for the respondent.

HARI PAL VERMA, J. (Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the order dated 18.09.2015 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Karnal, whereby the application filed by the respondent-complainant under Section 311 CrPC was allowed as well as the proceedings arising thereupon, allowing the complainant to tender the documents at a stage when the case was fixed for defence evidence and arguments.

Briefly stated, the respondent-Karnal Central Cooperative Bank Limited, Taroari Branch, Karnal (for short, "the Bank) had filed a complaint against the petitioner under Section 138/142 of the Negotiable

Instruments Act, 1881 (for short, “the Act”) with the allegations that the petitioner-accused availed a loan from the complainant bank and executed necessary loan documents in favour of the bank. However, the petitioner did not repay the loan amount and interest accrued thereon as per the agreed schedule of payment. As a result thereof, the account of the petitioner-accused became overdue, due to non-payment. When no loan amount was received from the petitioner, the complainant-bank visited the accused, so as to persuade him to pay the outstanding loan amount. Accordingly, the petitioner issued a cheque bearing No.0153711 dated 25.09.2013 for an amount of Rs.81,275/- of the Karnal Central Cooperative Bank Limited Branch at Taraori towards repayment of the loan amount and interest accrued thereon. However, on presentation of the said cheque to its banker, the same was bounced and was returned back with the remarks “insufficient funds” vide cheque returning memo dated 27.09.2013. It was averred in the complaint that at the time of issuing the said cheque, the petitioner was fully aware that the account from which the cheque in question was issued did not have sufficient funds. Thus, the accused willfully and deliberately issued the cheque in question and harassed and humiliated the complainant-bank. After the dishonouring of the cheque, the complainant-bank issued a legal notice to the petitioner asking him to make payment of the cheque amount. Since the petitioner failed to make payment of the cheque amount, the complaint in question was filed.

While the aforesaid complaint was pending, the complainant-bank filed an application (Annexure P-6) under Section 311 CrPC to lead additional evidence, in order to tender in evidence the documents namely

loan application form, loan sanction letter, surety bond, salary certificate of surety, quotation for loan, letter of acceptance of loan, demand promissory note and letter of continuity.

Reply to the said application was filed. The petitioner-accused pleaded that apart from the fact that the said application is not maintainable, it has been filed at a belated stage, when arguments were advanced by counsel for the parties. The object of filing this application is to fill in lacunae, which has come to the knowledge of the complainant during arguments, which law does not permit.

Learned Judicial Magistrate Ist Class, Karnal, vide order dated 18.09.2015 allowed the said application. The order dated 18.09.2015 reads as under:-

“Reply filed. Arguments heard. It is not in dispute the documents sought to be tendered by the complainant are material in nature and mere fact that the same were not tendered by the complainant due to inadvertence on part of his counsel does not imply that the complainant should be allowed to suffer, and moreover no prejudice will be caused to accused, accordingly in the interest of justice, the application in hand stands allowed, subject to payment of cost of Rs.1,000/- to be paid by the complainant to the accused.

To come up on 30.09.2015 for tendering documents by the complainant as well as for payment of cost.”

Counsel for the petitioner has argued that after the petitioner has led his evidence and when the case was fixed for final arguments, the application under Section 311 CrPC was moved on behalf of the respondent-bank to lead additional evidence. The object of filing such application is to fill in lacunae in the evidence. The trial Court vide order

dated 18.09.2015 allowed the application without considering the facts and the law. The very act of filing such an application under Section 311 CrPC at this belated stage of arguments is a total abuse of the process of law. He has further argued that the power under Section 311 CrPC is only for examination of witnesses and not to allow tendering of documents in additional evidence. Therefore, the order dated 18.09.2015 is liable to be set aside.

On the other hand, learned counsel for the respondent-bank has supported the impugned order and has argued that these documents sought to be led in additional evidence would not cause any prejudice to the petitioner-accused being already in existence.

I have heard learned counsel for the parties and perused the impugned order.

Before ascertaining correctness of aforesaid submissions having been made by the learned counsel for the petitioner vis-a-vis impugned order passed by the learned Court below, this Court deems it proper to take note of the provisions of law contained under Section 311 CrPC, which read as 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.”

Perusal of aforesaid provision clearly suggests that Court enjoys vast powers under Section 311 CrPC for leading additional evidence in any form and such power can be exercised at any stage before delivering the final judgment. Hon'ble the Apex Court in the case of **Rajaram Prasad Yadav V. State of Bihar and another(2013) 14 SCC 461** has set certain guidelines while exercising power under Section 311, which are as under:-

"17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

No doubt, the application under Section 311 CrPC has been

filed at a belated stage but at the same time, merely because the

respondent-bank is intending to lead evidence, which otherwise are documents signed between the parties and are already in existence, cannot lead to a conclusion that the complainant intends to fill in the lacunae. In the case of **Rajendra Prasad Vs. The Narcotic Cell through its Office-in-charge, Delhi 1999(3) RCR (Criminal) 440**, Hon'ble the Apex Court has held that an oversight in management of prosecution cannot be treated as filling in lacunae and no party in a trial can be fore-closed from correcting errors. If proper evidence is not adduced or relevant material is not brought on record due to inadvertence, the Court should permit such mistakes to be rectified even at a belated stage. In the said case, while allowing a party to adduce relevant material on record, the Apex Court has observed as under:-

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trail of the case, but an over sight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be fore-closed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

9. The very same decision Mohanlal Shamiji Soni v. Union of India, (supra) [AIR (1991) SC 1346] which cautioned against filling up lacuna has also laid down the ratio thus:

"It is therefore clear that the Criminal Court has ample power to summon any person as a witness or recall and re-examined any such person even if the evidence on

both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.'

Similarly, in the case of **Balwinder Singh Vs. State of Punjab & others 2010(1 RCR (Criminal) 909**, this Court has allowed such an application filed under Section 311 CrPC to bring on record the statements of witnesses recorded under Section 161 CrPC.

Even otherwise, at the stage of motion hearing of this case, on the joint request of the parties, efforts were made to resolve the matter amicably and case was sent to Mediation and Conciliation Centre of this Court, but no compromise could be arrived at.

In view of the aforesaid and the law laid down by Hon'ble the Apex Court in the case of **Rajendra Prasad** (*supra*), this Court does not find any illegality in the impugned order.

Accordingly, the present petition is dismissed.

September 10, 2018
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No