

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

CRM-M-44032-2015 (O&M)

Date of Decision: 2.8.2018

Sukhwinderpal Singh

.....PETITIONER(s).

VERSUS

Satpal Singh

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Amit Kumar Saini, Advocate
for the petitioner.

Mr. Gaurav Sharma, Advocate,
Legal Aid Counsel.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 Cr.P.C. for quashing/setting aside order dated 20.10.2015 (Annexure P-9) whereby the application under Section 311 Cr.P.C. read with Section 138 and 145 of Negotiable Instruments Act in complaint No.43/2 dated 1.4.2009 under Section 138 of Negotiable Instruments Act has been dismissed.

The facts of the case are that the complaint was filed with regard to dishonour of the cheque dated 15.1.2009 but at the time of tendering his affidavit into evidence, the petitioner/complainant wrongly mentioned the date of cheque as 12.1.2009. In order to clarify this fact, an application was moved under Section 311 Cr.P.C. for re-examine the complainant. The said application was dismissed solely on the ground that it was filed at a belated stage.

I have heard the learned counsel for the parties and gone through the record.

Under Section 311 Cr.P.C. the Magistrate has wide powers regarding examination of material witness during the course of trial at any stage. The only criteria for exercise of this power is that it should appear to the court that the evidence is essential to the just decision of the case. The provision is intended to be wide in view of the repeated use of the word “any” throughout its length. Interest of justice demands that in the facts of the case, the Magistrate should have allowed the additional evidence to be led under Section 311 of the Code as prayed by the appellant. On the basis of the evidence so recorded, the Magistrate might have proceeded to frame a charge under Section 494 IPC against the accused if the material on record justified it.

In the case in hand, it is always the case of the petitioner that the cheque in question is dated 15.1.2009. Even a bare perusal of the cheque (Annexure P-1) transpires that the same is 15.1.2009. Similar date of cheque is mentioned in the complaint.

To the mind of this Court, it was a clerical mistake which erupt into affidavit and is liable to be corrected. It will not cause any prejudice to the case of the petitioner nor it be termed as an occasion for failure of justice, rather it is necessary in the interest of justice.

Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another v. State of Gujarat and others**; 2006 (2) RCR (Criminal) 448 has held in para 25 and 26 as under : -

“25. In this context, reference may be made to [Section 311](#) of the Code which reads as follows:

"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."

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under [the Code](#) (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. 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 for 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 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 inquiry 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.”

In view of the above, the present petition is accepted and impugned order dated 20.10.2015 is set aside. The application under Section 311 Cr.P.C. is allowed with a direction to the court below to allow the petitioner-complainant to appear as a witness and submit a fresh affidavit.

August 2, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No