

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-17960-2019 (O&M)

Date of Decision:-23.4.2019

Sadhu Ram

... Petitioner

Versus

Smt. Rakha Rani

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Siddharth Gulati, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court challenging order dated 19.3.2019 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Kaithal, whereby the learned trial Court has accepted an application filed by the respondent/complainant under Section 311 Cr.P.C. and has permitted the complainant to tender in evidence a bill pertaining to purchase of sugar by the accused regarding which the accused had allegedly issued the cheque in question.
2. The learned counsel for the petitioner, while assailing the impugned order, has submitted that the said application was filed at a highly belated stage i.e. after the closure of the evidence of the complainant and even after the statement of the accused had been recorded under Section 313 Cr.P.C., wherein the petitioner/accused had disclosed his defence. The learned counsel has further submitted that infact the complainant had already availed of 31 opportunities to lead his evidence and the document now sought to be

led in evidence was very much in the knowledge of the complainant and that in these circumstances, the application ought to have been dismissed.

3. I have heard the learned counsel for the petitioner. It is no doubt correct that the application in question was filed after the complainant had already closed his evidence and even after the statement of the accused had been recorded in terms of Section 313 Cr.P.C. However, law in this regard is fairly well settled and an application for leading additional evidence can be filed and accepted even as belatedly as at the stage of defence arguments provided the evidence sought to be led is clinching evidence and is required for just adjudication in the matter. Hon'ble the Supreme Court in 2007(3) RCR (Criminal) 909 Iddar vs. Aabida held as follows:-

“10. The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, 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.

11. 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.....”

4. Hon'ble Supreme Court in 2014(13) SCC 59 Mannan Sk Versus State of West Bengal, where a witness who had been examined and re-examined was re-called for examination after 22 years of incident, held that re-examination does not prevent further recall and that Section 311 of the Code does not put any such limitation on the Court and such witness can still be recalled if his evidence appears to the Court to be essential to the just decision of the case. It was further observed therein that it is for the Court to consider all the circumstances and decide whether the prayer for recall is genuine or not.
5. Hon'ble Supreme Court, in 1999(6) SCC 110 Rajendra Prasad Vs. The Narcotic Cell through its Officer-in charge, Delhi, where an order calling a witness under Section 311 Cr.P.C., at a stage when arguments had concluded, had been challenged and it was contended on behalf of the accused that the same amounted to filling up of lacuna, the said contention was turned down while observing as follows:-

- “8. 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.”

6. In the present case, the controversy in hand pertains to dishonour of cheque and the material question would be as to whether the cheque in question was issued for a legal liability. Since the bill in question would tend to establish legal liability i.e. the amount due to be paid by the accused on account of purchase of sugar, the evidence sought to be led i.e. bill in question is a clinching piece of evidence and the trial Court has not committed any error in accepting the application. There is no infirmity in the impugned order and the same is upheld. The petition is sans merit and is hereby dismissed.
7. It is, however, made clear that none of the observations made above shall be construed to be an expression on merits of the main case.

23.4.2019

pankaj

**(Gurvinder Singh Gill)
Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No