

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

**Crl. Misc. No.M-20161 of 2019 (O&M)
Date of Decision: December 20, 2019**

Ishwar Singh and another

.....PETITIONER(s).

VERSUS

Rohtash Nagar

...RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Junaid Khan, Advocate
for the petitioner.

Mr. Munish Behl, Advocate
for the respondent.

SURINDER GUPTA, J.(Oral)

Heard.

Application filed by the complainant seeking permission to examine Bank Manager with statement of account No. 1067020100008702 in the name of Balbir Singh Nagar, his father and also to examine him (Balbir Singh Nagar) in additional evidence to prove that the amount advanced to the petitioner was taken by the complainant from his father was dismissed by the trial court with the following observations :-

- i) Evidence of the complainant was closed on 24.1.2018 and evidence of accused was closed on 25.7.2018.
- ii) Accused has moved the present application on 26.9.2018 which has been filed to fill up the lacuna in the case (in fact the application was moved by the complainant and

not by the accused).

- iii) Additional evidence cannot be allowed to fill up the lacuna.
- iv) The application if allowed will amount to review of the order dated 25.7.2018 (whereby evidence of accused was closed).
- v) Allowing of application will start de-novo trial and prejudice will be caused to the complainant.
- vi) The complainant was duly cross-examined at length by the defence counsel on 24.1.2018.
- vii) The application of the accused disclosed no new facts which was not within his knowledge at the stage of his defence evidence.
- viii) The application has been moved to delay the proceedings and to fill up the lacuna.

Complainant filed revision against the order of learned trial court, which was allowed by the court of revision with the observations in para no.6 as follows :-

“6. Now when this court appreciates the impugned order, in para no.3 it is mentioned that as if application was moved by accused and not by complainant and considering that accused is trying to fill up lacuna, ld. Trial court dismissed the application. Ld. Trial court also mentioned that if it allowed the application, it will amount to review of order dated 25.7.2018 and if this court appreciates the order dated 25.7.2018, it mentions that as accused has availed several opportunities, his oral evidence was closed except for the purpose of cross-examination of DW2. Thus, it appears that

while dealing with the application and passing order dated 26.10.2018, ld. Trial court had cited reasons for dismissal as if application was filed by accused whereas in fact application was filed by complainant and this itself shows non application of attentive mind by ld. Trial court. Had ld. Trial court considered the provision of Section 311 Cr.P.C. in the light of fact that after accused has put in his defence in cross-examination of complainant and questioned his sources to give personal loan, that gave rise to opportunity to complainant to justify to the court his sources and for that end, as he had mentioned in his cross-examination that funds were arranged from his father, complainant should have been given opportunity to lead evidence in regard to this disputed fact.”

Learned counsel for petitioner submits that the respondent-complainant was aware of his case and the evidence sought to be produced as additional evidence was within his knowledge but the application was moved 8 months after conclusion of evidence of complainant.

The question which arises for consideration is as to whether delay can be the sole ground for dismissal of application moved under Section 311 of Cr.P.C. The scope and spirit of Section 311 of Cr.P.C. is to authorize the court to summon any evidence or re-call any witness if his evidence appears to be essential for just decision of the case. Though the trial court committed grave error while disposing of the application filed by the complainant under the impression that this application has been moved by the accused, the court of revision has looked into the relevance of the evidence and observed that production of this evidence is required to prove the source from where the complainant had arranged the funds. The evidence sought to be produced is based on documentary evidence and

This evidence is quite material for just decision of the case, as such, I do not find any legal infirmity in the order of court of revision calling for interference.

This petition has no merits. Dismissed.

December 20, 2019
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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***