

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

CRR-3715-2018 (O&M)
Date of decision : 24.07.2019

M/s Music Planet

...Petitioner

Versus

Sanjay Kaushal, Proprietor

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Amit Choudhary, Advocate for the petitioner.

Mr. Aditya Jain, Advocate for the respondent.

ANIL KSHETARPAL, J. (ORAL)

Challenge is to the order passed by the learned Judicial Magistrate, Ist Class, dated 26.10.2018 dismissing the application filed by the complainant under Section 311 Cr.P.C. seeking permission to lead additional evidence.

Petitioner-complainant filed an application for permission to lead in additional evidence the document of loan and examine the witnesses of the aforesaid document. It has been pointed out that counsel for the accused during cross-examination had called upon the complainant to produce the document of loan on which the complainant had answered that he is in possession of the documents in which two witnesses have also signed. The petitioner prays that the aforesaid document of loan and in order to prove that aforesaid document, two marginal witnesses of the aforesaid

document are required to be examined in additional evidence.

Learned Court dismissed the application on two grounds, one is that this would result in filling up of lacuna and if application is allowed, it shall amounts to review of the order dated 05.04.2018 closing the evidence of the complainant.

This Court has heard learned counsel for the parties at length and with their able assistance gone through the paper book.

Section 311 Cr.P.C. enables the Court to permit the parties to summon material witnesses or examine the person present. Such power is available to the Court at any stage. Section 311 Cr.P.C. gives very wide powers to the Court in order to do substantive justice between the parties.

Now let us test the aforesaid position in the facts of the present case.

In the present case, it is the counsel for the accused who had suggested to the complainant, when he appeared in evidence about the said loan document dated 03.07.2014 existence whereof was admitted. He further admitted that aforesaid document is in his possession. Obviously, the aforesaid document is important piece of evidence on which both the parties wish to rely upon. Still further, the Courts have been constituted to do justice between the parties rather than scuttling it on procedural lapse. The procedures are handmade for justice and not for creating obstacles.

As far as second reason assigned by the Court to dismiss the application is concerned, it is totally perverse, to say least. The closure of evidence is not a bar for moving an application under Section 311 Cr.P.C. Normally, application under Section 311 Cr.P.C. which in common

language is called application for additional evidence, is filed after closure of evidence and hence, the Court was not called upon to review the order closing the evidence.

The observation of the learned trial Court that application has been filed to fill up lacunas is also wrong because it is the counsel for the accused who had put this question to the complainant when he appeared in evidence. Even otherwise, provision under Section 311 Cr.P.C. is to make up deficiency, if any, inadvertently left by the parties.

In view thereof, order under challenge is set aside. Application under Section 311 Cr.P.C. shall stand allowed. The petitioner-complainant would be permitted to produce the loan document and examine witnesses in support thereof. Corresponding opportunity would also be granted to the accused to lead evidence. However, keeping in view the fact that complaint is pending from the year 2016, learned trial Court is requested to conclude the trial of the case expeditiously.

In view of the above, the present petition is allowed.

24.07.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No