

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

**Criminal Misc. No.M-39205 of 2019 (O&M)
Date of Decision: September 16, 2019**

Avinderpal Singh

.....PETITIONER(s).

VERSUS

Gurdeep Singh

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Gursimran Singh Madaan, Advocate
for the petitioner (s).

SURINDER GUPTA, J.

The petitioner seeks quashing of order dated 29.07.2019 passed by Judicial Magistrate 1st Class, Ludhiana, whereby application of respondent under Section 311 Code of Criminal Procedure (for short-Cr.P.C.) to produce and prove on record the bills regarding sale of goods to petitioner and balance sheet, was allowed.

Learned counsel for the petitioner argues that the bills and balance sheet were already in possession of the complainant. He had not produced it at earlier stage. The case was partly argued on 13.05.2019 and the counsel for petitioner had relied on a citation that in the absence of bills coming on record regarding which cheque is alleged to have been issued, the complaint is not maintainable. In order to fill up the lacuna, the respondent moved application under Section 311 Cr.P.C., which was allowed at a very later stage and without looking into the fact that petitioner has sought to fill up the lacuna in his case by seeking production of

observations of Co-ordinate Bench of this Court in ***Harbhajan Singh Vs. State of Punjab and anr. 2016 (4) Law Herald 3353.***

Learned trial Court while allowing the application, has looked into the fact that petitioner has cross-examined the complainant about the bills in his possession and complainant categorically stated that he is having the bills, bill book, balance sheet and other documents in his possession. However, the petitioner did not insist on production of the same. The relevant paragraph of the order passed by learned Judicial Magistrate is reproduced as follows:-

“I have heard the contentions and counter-contentions of the Learned counsel for the parties and gone through the judicial file carefully. It is observed that even though the complainant alleged that cheque in question was issued by the accused for payment of goods purchased by the accused from him, however, no bill was placed on file at the time of filing of the present complaint or during the evidence of complainant. During the cross-examination of the complainant, learned counsel for the accused asked the questions to the complainant as to whether he is having any document pertaining to his connection with the firm M/s JST Zip Centre to prove the fact of his ownership of the complainant firm on which the complainant replied that he is having bill book, balance sheet, stamp and addresses etc. Thus, the complainant has stated during his cross-examination that he is having bills of the goods sold by him to the accused. But, these documents were not called to be produced by the learned counsel for the accused. So, from this fact, it is clear that complainant has mentioned the fact regarding bills issued by him regarding purchase of goods by the accused from him. It is also observed that the bills and

balance sheet proposed to be placed and proved on file by the complainant are material documents as the same goes to the root of the present case. So, in order to provide full opportunity being heard to the complainant and for the proper adjudication of the present case, present application is allowed, subject to costs of Rs.2000/- to be paid by the complainant to the accused.”

In the case of *Harbhajan Singh Vs. State of Punjab and others (supra)*, the principle which is basis of the provisions of Section 311 Cr.P.C. has been reiterated while observing that scope of Section 311 Cr.P.C. is to enable the Court to permit a party to produce the evidence which is essential for the just decision of the case. Learned trial Court has found that the bills and balance sheet are required and relevant for the just decision of the case. Even if, application has been made after hearing part arguments, learned trial Court was competent to allow the production of any document, which in its opinion, was essential for the just decision of the case. The observations in the above referred citation are not helpful to substantiate the submissions made by learned counsel for the petitioner.

Keeping in view the above discussion, I find no reason to interfere with the discretionary power exercised by the trial Court while allowing the application of respondent under Section 311 Cr.P.C. This petition has no merits.

Dismissed.

September 16, 2019

Sachin M.

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No