

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

CRM-M No.18827 of 2015 (O&M)

Reserved on: 05.02.2019

Date of decision: 06.02.2019

Parveen Jaswal

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Bawa, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Mr. Vaibhav Narang, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 10.06.2014 passed by the trial Court, vide which the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') in FIR No.35 dated 15.05.2010 registered under Sections 406 and 420 of the Indian Penal Code (in short 'IPC') at Police Station New Baradari, District Jalandhar, was dismissed.

Brief facts of the case are that the petitioner got the aforesaid FIR registered against the respondent/complainant with the allegations that the accused was appointed as Manager of M/s. Neeru Electronics, Jalandhar and on 30.01.2010 while checking the stock, the complainant came to know that the accused has stolen the stock and by

manipulating the bills has also misappropriated the cash and, thus, has committed the offence of breach of faith, fraud and forgery. It is further stated in the FIR that the accused has stolen the mobile accessories of Sony Ericson, embezzled the sale proceeds of the stock that was in his possession being Manager of the showroom and has indulged in malpractice of purchasing against cash of the complainant from unauthorized sources and by selling the goods, he has embezzled the profits and thus, it was prayed that action be taken against the accused.

The police after registration of the FIR conducted the investigation and found that 19 mobile phones of Videocon, 06 Videocon DVDs and 43 boxes of accessories of Videocon were found short, which is approximately of Rs.1.84 lacs and when the accounts and cash of the shop was checked, it was found to be Rs.2,54,643/- short as the material was sold by the accused – Sanjeev Kumar secretly and accordingly, the police submitted the challan under Sections 406, 420 and 381 IPC.

The trial Court, thereafter, framed the charge against the accused under Sections 406 and 420 IPC.

After the prosecution has led the evidence, the petitioner filed an application under Section 311 Cr.P.C., seeking permission to lead additional evidence in order to produce Form A and Form C of the firm i.e. M/s. Neeru Electronics. In the application, it is stated that at the time of registration of the FIR inadvertently, these, documents could not be produced and similarly a hand-written register of the accused showing some manipulation in the entries was also not produced.

The respondent/accused contested the said application on

the ground that these documents were never produced at the time of recording the evidence of prosecution and, therefore, the same cannot be allowed.

The trial Court, thereafter, vide impugned order dated 10.06.2014 dismissed the application. The operative part of the said order reads as under:-

“....3. This Court heard the rival contentions of the ld. defence counsel and ld. APP and gone through the pleadings of the parties minutely and documents placed on record. After hearing both the sides and after perusing the record available on the file, this Court is of the considered view that by virtue of Section 311 Cr.P.C., the Court is vested with the ample power to allow the complainant/prosecution or any party to the case to call for the documents or any other witness in evidence, which earlier did not form part of either investigation report or part of evidence recorded during trial proceedings of the case. This is the trial Court and in the trial the purpose of fair trial is to collect the maximum evidence which shall enable the Court to decide the controversy or dispute between the party appearing before the Court. In 2011 Recent Criminal Reports Page 477(SC) the Hon'ble Apex Court of the country has held that “the trial Court has to elicit all necessary material by playing active role in the evidence collecting process and Section 311 Cr.P.C. and Section 165 of the Indian Evidence Act confer vast power on the Court to call for any evidence which may have vital impact on the ultimate decision to be passed by the Court.” Though, the party cannot claim as a matter of right to call for additional evidence rather power u/s 311 Cr.P.C. is only a discretionary power of the Court and the discretionary power of the Court has to be exercised with

great care and caution so that it may not be used as a tool by either of the parties to prolong the trial and to re-open the matter time and again.”

4. *In the present case, Id. APP for the state filed the present application to produce on record Form-A and Form-C of Neeru Electronics as well as hand-written registers of the accused showing manipulated entries on the ground that inadvertently these documents could not produce before the Investigating Officer. On the other side, counsel for the accused/applicant argued that these documents are forged and fabricated documents and have been created just to prepare evidence against the accused. From the perusal of file, it reveals that FIR was registered on the letter written by the complainant, which is Ex.PW3/A wherein which complainant levelled the allegations against the accused that accused has embezzled and misappropriated the funds of M/s. Neeru Electronics and also manipulated certain bills. This Court is of the view that it was the duty of the complainant to produce those manipulated entries at the time of registration of FIR or during the course of investigation. However, he failed to handover those documents to the police at that relevant time. Although, Court can allow production of documents u/s 311 Cr.P.C. on the later stage, however at the same time it is the duty of the Court to safeguard the interest of accused person. Neither in FIR nor during the course of investigation complainant has ever stated that Form-A and Form-C and hand-written register of accused showing manipulated entries have been lost or are not traceable. Now the complainant all of sudden have produced those documents without citing any reason about their non-production at the relevant time. This Court is of the view that if the present application is allowed, then it will prejudice the interest of accused*

person. Therefore, present application filed by the ld. APP for the State is found devoid of any merits and same is hereby dismissed.”

Counsel for the petitioner has submitted that the proposed additional evidence i.e. Form A and Form C of the firm as well as the hand-written register of the accused inadvertently could not be produced during the investigation or during the evidence led by the prosecution and therefore, for just and proper decision of the case and to achieve the object of justice, these, documents are necessary to be produced on record.

In reply, counsel for the respondents has argued that it is own case of the petitioner and his application that the documents were within the knowledge of the complainant and these were neither given to the police during the investigation and even when the evidence of the prosecution was led. It is further argued that the documents were never relied upon by the prosecution and by producing the same, the complainant want to add the allegation of forgery, which is not there in the FIR as the report under Section 173 Cr.P.C. was submitted under Sections 420, 406, 381 IPC and the trial Court has framed the charge only under Sections 406 and 420 IPC. It is further argued by counsel for the respondents that if, the application for additional evidence is allowed, the complainant will move an application for alteration of charge and in that eventuality, the entire trial will start *de novo*, which is at the fag end as the FIR pertains to the year 2010. It is lastly argued that no plausible explanation has been given by the complainant in his application filed under Section 311 Cr.P.C., as to why the evidence which was in the knowledge of the complainant was not produced

earlier as noticed above.

Counsel for the respondents has relied upon the judgment ***“Jaspal Kaur vs State of Punjab”***, 2016(1) RCR (Criminal) 163 wherein this Court has observed that ***the powers under Section 311 Cr.P.C. can be exercised, at any point of time, during the trial and the only self imposed restrictions on the powers under Section 311 Cr.P.C. are that the nature of case cannot be permitted to be changed and a serious lacuna cannot be permitted to be filled, at the instance of a party to the litigation, by moving an application under Section 311 Cr.P.C.***

After hearing the counsel for the parties, I find no ground to interfere in the impugned order passed by the trial Court. The FIR pertains to the year 2010 and during the investigation, the petitioner has never produced the aforesaid documents before the Investigating Officer and the same were never verified. The hand-written register of the accused was also not produced before the Investigating Officer and, therefore, there was no occasion to verify the contents and hand-writing of the same. The petitioner/complainant did not rely upon the aforesaid documents, even at the stage of framing of the charge and, therefore, allowing the application at this stage, when the prosecution evidence is over, will prejudice the rights of the respondent/complainant. A perusal of the application filed under Section 311 Cr.P.C., show that the only reason given is due to inadvertence Form A and Form C and the hand-written register of the accused, could not be produced either before the police during the investigation or while leading the prosecution evidence. A perusal of this application clearly show that the petitioner

was well within the knowledge of these documents as it is not stated that he came across these documents subsequently when the challan was presented and therefore, the averments made in the application do not meet the requirement of Section 311 Cr.P.C. Even otherwise, these documents are not *per se* admissible and require oral evidence of the scribe *qua* Form A and Form C, the scribe name is not disclosed in the application.

Accordingly, I find no ground to differ with the discretion exercised by the trial Court.

Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

06.02.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No