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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 741/2020**

SHRI LALIT NEGI

..... Petitioner

Through: Mr. Ashwani Kumar Sharma, Mr.
Manoj Kumar Tyagi, Ms. Vaishali
and Ms. Ravita, Advs.

Versus

SHRI VINOD RAWAT

..... Respondent

Through: Mr. Deepak Anand, Mr. Aayushman
and Mr. Vatsayana, Advs.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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04.03.2020

1. The present petition is directed against the order dated 19.12.2019 passed by the trial court vide which the petitioner's application under Section 311 Cr.P.C. was dismissed.
2. A challenge to the aforesaid order before the Sessions Court met the same fate albeit for the reason that the revision is not maintainable against the interlocutory order.
3. The petitioner is facing trial for an offence under Section 138 of the Negotiable Instruments Act, 1881. Vide order dated 02.04.2019, the trial court observed that the matter was at the stage of complainant's evidence however, on that day, neither the complainant nor the accused appeared and last and final opportunity was granted to both the parties to appear and

pursue the matter. The matter was directed to be listed on 01.10.2019, on which date, the opportunity of the petitioner to cross-examine the complainant was closed. On 29.11.2019, an application under Section 311 Cr.P.C. was filed on behalf of the petitioner. On the same day, the petitioner's statement under Section 313 Cr.P.C. was recorded. It has been informed that the matter is at the stage of defence evidence.

4. Learned counsel for the petitioner has prayed that only one opportunity may be granted to the petitioner to cross-examine the complainant.

5. On the other hand, learned counsel for the respondent has supported the impugned order and prayed for the dismissal of the present petition.

6. I have heard the learned counsels for the parties and gone through the case records.

7. The scope of Section 311 Cr.P.C. was considered by the Supreme Court in the case of P. Sanjeeva Rao v. State of A.P. reported as **(2012) 7 SCC 56**, wherein it was held as under:-

"20. Grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs MANU/SC/1505/1999 : (2000) 10 SCC 430. The following passage is in this regard apposite:

"6. In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the

prisoners and courts should afford the opportunity to them in the fairest manner possible."

(emphasis supplied)

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23. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined in chief about an incident that is nearly seven years old.. we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself."

8. In Natasha Singh v. CBI reported as (2013) 5 SCC 741, while referring to its earlier decisions in Mir Mohd. Omar v. State of W.B. reported as (1989) 4 SCC 436, Mohanlal Shamji Soni v. Union of India reported as AIR 1991 SC 1346, Rajeswar Prasad Misra v. State of W.B. reported as AIR 1965 SC 1887, Rajendra Prasad v. Narcotic Cell reported as (1999) 6 SCC 110, P. Sanjeeva Rao (Supra) and T Nagappa v. Y.R. Muralidhar reported as (2008) 5 SCC 633, the Supreme Court held as under:-

"8. Section 311 Cr.P.C. empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or "any other proceedings" under Cr.P.C., or to summon any person as a witness, or to recall and re-examine any person who has

already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, Cr.P.C. has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

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15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid

reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

16. Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardised. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same."

9. In the facts and circumstances of this case, I deem it appropriate to allow the present petition subject to payment of cost of Rs.10,000/- to the complainant within a period of two weeks from the passing of this order. The trial court shall grant the petitioner an opportunity to cross-examine the complainant on one date only, unless in the opinion of the court, one more date is required for completion of the cross-examination. Learned counsel

for the petitioner undertakes not to take any adjournment in this regard.

10. With the above observations, the present petition is disposed of along with the pending application.

11. Copy of this order be communicated to the trial court.

MANOJ KUMAR OHRI, J

MARCH 04, 2020

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