

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

CRM-M-45869-2021
Date of Decision:-2.12.2021

KAWALJEET KAUR

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Ms. G.K. Mann, Senior Advocate with
Mr. Akashdeep Singh Mann, Advocate
for the petitioner.

Mr. A.S. Dhaliwal, DAG, Punjab.

KARAMJIT SINGH, J. (Oral)

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

The present petition has been filed by petitioner/accused under
Section 482 Cr.P.C. for setting aside order dated 13.2.2020 (Annexure P-5)
passed by the learned Judicial Magistrate Ist Class, Ludhiana vide which the
application filed by the petitioner/accused under Section 311 Cr.P.C. was
dismissed.

The brief facts of the case as stated by the counsel for the
petitioner/accused are that the respondents No.2 and 3 filed criminal

complaint under Section 138 of the Negotiable Instruments Act (in short 'NI Act') against the petitioner/accused on the basis of dishonor of cheque dated 28.11.2015 worth ₹31,18,765/-. On completion of recording of preliminary evidence, the petitioner was summoned to face trial under Section 138 of NI Act. Notice of accusation was served, to which, she did not plead guilty. During trial, respondent No.3 being complainant appeared in the witness box and his cross-examination was completed in 2019. Later on in the year 2021, petitioner/accused came to know about the death of Gopi Chand, the other partner of respondent No.2 (partnership firm). Immediately thereafter petitioner/accused filed application under Section 311 Cr.P.C. to recall respondent No.3 and to cross-examine him further by putting to him the death certificate of Gopi Chand, which fact was never disclosed by respondents No.2 and 3 to the trial Court.

The said application was contested by respondents No.2 & 3 and after hearing the counsel for the parties the same was dismissed vide impugned order dated 13.2.2020.

The counsel for the petitioner/accused contended that the application moved by petitioner/accused under Section 311 Cr.P.C. was declined by the trial Court just on flimsy grounds. That the trial Court failed to take into consideration the fact that respondents No.2 & 3 kept the trial Court in dark regarding the death of other partner Gopi Chand who died on 19.1.2015. Now when the petitioner/accused got information regarding death of Gopi Chand, she moved the application under Section 311 Cr.P.C. to bring the aforesaid fact in the notice of the trial Court. The counsel for the petitioner/accused further prayed that the present petition be allowed in

the interest of justice and she be given an opportunity to put the death certificate of Gopi Chand to respondent No.3 in his further cross-examination by recalling him in the trial Court.

The present petition is being disposed of without issuing notice to respondents No.2 & 3.

I have considered the submissions made by the counsel for the petitioner/accused.

Admittedly, the application under Section 311 Cr.P.C. was moved by petitioner/accused at the fag end, even after the recording of her statement under Section 313 Cr.P.C. by the trial Court. Section 311 Cr.P.C. does not bar filing of any such application at any stage of the trial. So such an application could not be declined by the trial Court just on the ground that the same was filed at belated stage. What is to be seen by the trial Court while considering an application under Section 311 Cr.P.C. is that evidence sought to be led with the aid of Section 311 Cr.P.C. should be essential for the just decision of the case.

In the case in hand, it is the plea of the petitioner-accused that she intends to place the fact regarding death of other partner of respondent No.2 namely Gopi Chand before the trial Court, which fact has been concealed from the Court by the complainant till the filing of the application in question. The counsel for the petitioner also made prayer that in case her application under Section 311 Cr.P.C. is allowed, the further cross-examination of the complainant would be restricted only to the extent of putting death certificate of Gopi Chand to him in his statement.

In the light of the above, this Court is of the view that aforesaid document i.e. death certificate of Gopi Chand, whose copy is Annexure P-3 is essential document to be placed on record for the just decision of the case.

Resultantly, the present petition is allowed and order dated 13.2.2020 passed by the Court of Judicial Magistrate Ist Class, Ludhiana is hereby set aside and respondent No.3 Sarvesh Kumar be recalled by the trial Court, for his further cross-examination by the defence counsel to put him death certificate of Gopi Chand (Annexure P-3) and to confront the said witness in this regard, subject to deposit of cost of ₹5,000/- by the petitioner/accused with the District Legal Services Authorities, Ludhiana.

It is further clarified that in case respondent No.2 and 3 are aggrieved in any manner, by this order then they would be at liberty to approach this Court, by filing an appropriate application.

(KARAMJIT SINGH)
JUDGE

2.12.2021
Gaurav Sorot

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No