

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.M.C. 1277/2020 & CRL.M.A. 4930/2020 (stay)

CRL.M.C. 1290/2020 & CRL.M.A. 4957/2020 (stay)

CRL.M.C. 1291/2020 & CRL.M.A. 4959/2020 (stay)

CRL.M.C. 1292/2020 & CRL.M.A. 4961/2020 (stay)

CRL.M.C. 1293/2020 & CRL.M.A. 4963/2020 (stay)

Date of decision: 13.12.2021

IN THE MATTER OF:

M/S SHAURYA IMPEX

..... Petitioner

Through: **Mr. P.K. Sharma and Mr. Gaurav
Aggarwal, Advocates.**

Versus

M/S SOUTH INDIA TRADING COMPANY

..... Respondent

Through: **Mr. Vikas Nagwan and Ms. Manvi
Rajvanshy, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petitions have been filed under Section 482 Cr.P.C. on behalf of the petitioner assailing the order dated 10.02.2020 passed by the learned Metropolitan Magistrate-05 (NI Act), Patiala House Courts, New Delhi in CC Nos. 1620/19, 1622/19, 1624/19, 1623/19 and 1625/19, whereby the petitioner's application filed under Section 311 Cr.P.C. for summoning a bank official of *HDFC Bank*, alongwith relevant records, was dismissed. By way of the present petitions, the petitioner also seeks setting aside of the order dated 28.02.2020 passed by the learned District and

Sessions Judge, Patiala House Courts, New Delhi in CR Nos. 140/2020, 136/2020, 137/2020, 139/2020 and 138/2020, vide which the order dated 10.02.2020 has been upheld.

2. As both the impugned orders are common orders and considering that the issue arising in the abovenoted petitions is identical, the petitions are taken up for hearing together and shall be disposed of by a common order.

3. Learned counsel for the petitioner submits that in the present case, criminal complaints were filed in January, 2019 and notices under Section 251 Cr.P.C. were framed on 20.09.2019. He further submits that on 11.01.2020, the petitioner came to know about the instructions given to the Bank for stopping payment of the cheques, when the Bank in its reply stated that '*stop payment*' instruction was given on 27.09.2017, which is almost one year prior to the dishonour of the cheque in question. It is submitted that examination of the concerned bank witness is crucial to the defence of the present petitioner/accused.

4. Mr. Vikas Nagwan, Advocate has appeared for the respondent and opposed the prayer made in the present petitions. He submits that the petitioner has taken a contradictory stand in its reply to the notice framed under Section 251 Cr.P.C., wherein it was stated that the cheques were given as a security.

5. Learned counsel for the petitioner has also relied upon the reply given to the notice framed under Section 251 Cr.P.C. and prayed that only one opportunity may be given to the petitioner to examine the concerned bank official for the aforesaid purpose.

6. On a specific query, learned counsels for the parties inform that the next date of hearing fixed before the Trial Court is 04.05.2022 and the matter is listed for final arguments.

7. I have heard learned counsels for the parties and perused the entire material placed on record.

8. Before proceeding to analyze the facts of the present case and recounting the position of law on the subject, I deem it apposite to reproduce Section 311 Cr.P.C. hereunder, which is as follows -

“311. Power to summon material witness, or examine person present.—Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

9. The scope of Section 311 Cr.P.C. has been considered by the Supreme Court in P. Sanjeeva Rao v. State of Andhra Pradesh reported as **(2012) 7 SCC 56**, where the Court held as under:-

"20. Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs.

xxx

xxx

xxx

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."

10. In Natasha Singh v. Central Bureau of Investigation (State) reported as **(2013) 5 SCC 741**, while referring to its earlier decisions in Mir Mohd. Omar and Others v. State of West Bengal reported as **(1989) 4 SCC 436**, Mohanlal Shamji Soni v. Union of India and Another reported as **1991 Supp (1) SCC 271**, Rajeswar Prasad Misra v. State of West Bengal and Another reported as **1966 (1) SCR 178**, Rajendra Prasad v. Narcotic Cell through its Officer in Charge, Delhi 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 has held as under:-

"8. Section 311 CrPC 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 CrPC, 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, CrPC 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.

xxx

xxx

xxx

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 CrPC 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 CrPC 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."

11. Keeping in view the exposition of law outlined hereinabove, the fact that the prayer made in the present petitions is restricted to examining of only one bank official from *HDFC Bank* and the further fact that the next date of hearing before the Trial Court is 04.05.2022 for final arguments, it is directed that the Trial Court shall give only one effective opportunity to the petitioner/accused to summon the concerned official from *HDFC Bank*, who shall be examined and cross-examined on the same date. The said

opportunity shall, however, be subject to payment of composite cost of Rs.30,000/- by the petitioner, out of which an amount of Rs.15,000/- shall be paid to the complainant and the remaining amount of Rs.15,000/- shall be deposited with the *Delhi State Legal Services Authority* within a period of two weeks from today.

12. Proof evidencing receipt of deposit shall be filed by the petitioner in the Court.

13. List the matter before the concerned Trial Court for the aforesaid purpose on 01.02.2022 at the first instance.

14. The petitions, along with the pending applications, are disposed of in the above terms.

15. The Registry shall list the matter before this Court in case receipt of cost to be paid by the petitioner is not filed within the stipulated time period.

16. A copy of this order be communicated to the concerned Trial Court through the concerned Principal District Judge.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 13, 2021
'dc'

Click here to check corrigendum, if any