

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-15321-2019 (O&M)

Date of Decision : September 19, 2022

M/s Sri Ram Dass Rice & General Mill
and another Petitioners
vs.
M/s Pawan Kumar & Sons Respondent

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR.

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Present : Mr. Akhil Kashyap, Advocate
for the petitioners.

Mr. Amit Arora, Advocate
for the respondent.

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NAMIT KUMAR, J. (Oral) :

This order of mine shall dispose of two petitions bearing **CRM-M No.15321 of 2019** and **CRM-M No.15767 of 2019** as the issue involved in both the petitions is the same. However, for the sake of convenience, facts are being taken from **CRM-M No.15321 of 2019**.

The instant petition has been filed by the petitioners seeking quashing of order dated 11.02.2019 (Annexure P-7), passed by the Court of learned Additional Sessions Judge, Tarn Taran, thereby allowing the application under Section 311 Cr.P.C., by reversing the order dated 17.05.2018 (Annexure P-6), passed by the Court of learned Chief Judicial Magistrate, Tarn Taran in Complaint No.61 of 31.03.2016 (Annexure P-1) and Summoning Order dated 16.09.2016 (Annexure P-2).

The brief facts of the case are that the respondent, being the complainant, instituted a complaint on 31.03.2016, under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as – the Act) against the petitioners as in order to discharge legal debt amounting to Rs.13,58,253/-, the petitioners issued cheque dated 01.12.2015 and the same was dishonoured on presentation vide memo dated 20.02.2016.

The legal notice demanding the amount was issued on 29.02.2016 but the petitioners failed to make the payment and accordingly, the complaint was instituted for commission of offence under Section 138 of the Act.

The learned Chief Judicial Magistrate, Tarn Taran, vide order dated 16.09.2016, summoned the petitioners to face trial.

In the aforesaid trial, the complainant-respondent appeared as CW-1 and cross-examined the petitioners. On 03.02.2018, an application under Section 311 Cr.P.C. was moved by the complainant-respondent for leading additional evidence in order to summon the following persons as additional witnesses :-

1. Pardep Kumar – Accountant of complainant.
2. Concerned Clerk from Income Tax Department, Tarn Taran, along with IT Return of Pawan Kumar, along with computation of income, balance sheet etc.
3. FORM 26 AS of Pawan Kumar for assessment year 2014-15.

The said application was contested by the petitioners by filing

reply to the application, wherein it was stated that the application under

Section 311 Cr.P.C. has been filed just to fill lacuna and is liable to be dismissed.

Learned Chief Judicial Magistrate, Tarn Taran, vide order dated 17.05.2018, dismissed the said application filed by the complainant-respondent observing that while leading the preliminary evidence, the complainant has not relied upon these witnesses. The concluding part of the order dated 17.05.2018 reads as under :-

“After hearing Ld. Counsel for the parties and having gone through the record carefully, I found no merit in the application as the complainant did not rely upon these witnesses and documents, while leading his preliminary evidence and it has not been mentioned in the application as to how and why the necessity arose to examine those witnesses at this stage. A witness, who was not deemed necessary by the complainant while leading preliminary evidence, cannot be termed as a necessary witness after appearance of the accused. Hence, the application of the complainant is found without any merit and the same is hereby, dismissed, without prejudice to the merit of the case. Earlier the case was fixed for evidence of the complainant. On request adjourned to 02.07.2018 for entire evidence of the complainant, subject to last opportunity.

*Sumit Bhalla,
Chief Judicial Magistrate
Tarn Taran-17.05.2018”*

The complainant-respondent preferred a revision petition

against the order dated 17.05.2018 passed by learned Chief Judicial Magistrate, Tarn Taran. The revision petition was allowed vide order dated 11.02.2019 and two effective opportunities were granted to the complainant-respondent to examine the said witnesses and it was further ordered that the petitioner, if desires, to cross-examine the complainant, on the basis of new material produced, it is open to him to take a motion before the Court. The concluding para of the order dated 11.02.2019 is as under :-

“11. Hence, keeping in view the totality of the fact and further in the interest of justice, the instant revision is allowed and order under revision dated 17.05.2018 is hereby set aside, only two effective opportunity is hereby accorded to the revisionist to produce the witnesses mentioned in the application under Section 311 Cr.P.C. If the accused is desirous of cross-examining the complainant on the basis of the new material produced, it is open to him to take a motion before the court for the purpose. Further learned trial court is directed to dispose of the case expeditiously. Accordingly, the instant revision petition is disposed of. Record of learned lower court be returned forthwith along with copy of this order. File be consigned to the Record Room.

*(Bishan Saroop)
Additional Sessions Judge,
Tarn Taran.”*

Hence this petition by the petitioner-accused.

It has been contended by the learned counsel for the petitioner

that the application under Section 311 Cr.P.C. was filed by the respondent-

complainant to fill up the lacuna and the Court has not satisfied itself that the additional evidence is required for the just decision of the case.

Per contra, learned counsel for the respondent contends that the order dated 11.12.2019 passed by learned Additional Sessions Judge, Tarn Taran is perfectly legal and valid. It has been contended by the learned counsel for the complainant-respondent that no prejudice will be caused to the petitioners as the opportunity to cross-examine the witnesses has already been granted to them and therefore, the order dated 11.02.2019, passed by the learned Additional Sessions Judge, Tarn Taran is perfectly legal and valid and is liable to be upheld.

Section 311 Cr.P.C. reads as under :-

“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.”

The Hon'ble Supreme Court, in a decision, while interpreting the provisions of Section 311 in the case of **Rajaram Prasad Yadav vs. State of Bihar and another** reported as **2013(3) RCR (Criminal) 726** has held as under :-

“3. By a short order dated 18.11.09,

passed in Sessions Trial No. 425 of 2009, the trial Court disallowed the applications of the Respondents filed under [Section 311](#) of the Code of Criminal Procedure (Cr.P.C.), to re-examine PW-9, the informant. The High Court directed the trial Court to allow the 2nd Respondent to examine himself as a witness on a specified date by its order dated 9.12.2010.

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23. From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Cr.P.C. read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under [Section 311](#) is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under [Section 311](#) Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under [Section 311](#) Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which

will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of [Section 311 Cr.P.C.](#) simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest

manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

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30. *In the light of the above conclusion, applying the various principles set out above, we are convinced that the order of the trial Court impugned before the High Court did not call for any interference in any event behind the back of the appellant herein. The appeal, therefore, succeeds. The order impugned dated 9.12.2010, passed in Crl. M.P. 12454/2010 of the High Court*

is set aside. The order of the trial Court stands restored. The trial Court shall proceed with the trial. The stay granted by this Court in the order dated 7.3.2011, stands vacated. The trial Court shall proceed with the trial from the stage it was left and conclude the same expeditiously, preferably within three months from the date of receipt of the copy of this order.”

After hearing learned counsel for the parties, I am of the opinion that the present petitions are liable to be dismissed as in para 1 of the complaint, specific stand has been taken that proper account books are being maintained during its regular course of business and the respondent-complainant wanted to examine the Accountant of the Firm, only in order to prove the factum of the account books and outstanding amount in order to prove the legally enforceable debt and the said material is very important for the just decision of the complaint and further, by summoning the income tax records, the complainant wanted to substantiate the legal debt and the outstanding amount of the accused Firm. Further, no prejudice will be caused to the petitioners as the opportunity to cross-examine the witnesses has already been granted to them.

It is the settled law that object underlying the provisions of Section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in statements of witnesses examined from either side. The exercise of widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate,

appears to the court to be essential to the just decision of the case, the same should be exercised.

In view of what has been discussed in the foregoing paragraphs, I find no merit in these two petitions (CRM-M No.15321 of 2019 and CRM-M No.15767 of 2019). Accordingly, both these petitions are hereby dismissed.

All interim orders shall stand vacated.

Pending applications would also stand disposed of in view of aforesaid judgment.

September 19, 2022
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(NAMIT KUMAR)
JUDGE

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