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

CRM-M-19924-2022

Date of decision : 10.05.2022

Gurdeep Kumaar Chhabra

...Petitioner

Versus

Raj Kumar Kukkar

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Durga Dutt Sharma, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of impugned order dated 02.03.2020 (Annexure P-5) passed by the Court of Judicial Magistrate Ist Class, Abohar in Criminal Complaint No.37 dated 09.01.2018, vide which, an application filed under Section 311 of Cr.P.C. for summoning and examination of Sh. Ajay Ghilhotra, Notary Public alongwith material record, has been allowed.

Learned counsel for the petitioner has submitted that in the present case, an application filed under Section 311 of Cr.P.C. has been allowed only to fill up lacuna and the same has caused prejudice to the defence of the accused. It is further submitted that in spite of the opportunity given, the complainant never chose to examine the said witness. It is stated that the impugned order is illegal, against law and thus, deserves to be set

aside.

This Court has heard the learned counsel for the parties and has perused the paper book.

A perusal of the impugned order would show that an application under Section 311 of Cr.P.C. was filed by the complainant to summon the witness namely Ajay Ghilhotra, Advocate-cum-Notary Public who is stated to have attested two affidavits and one agreement and the said agreement is stated to have been issued by the petitioner and the said documents have already been produced on record by the complainant.

The Judicial Magistrate Ist Class, Abohar, after considering the provisions of Section 311 of Cr.P.C. had observed that agreement dated 18.08.2016 as Ex.CW2/B, affidavit dated 18.08.2016 as Ex.CW2/C and affidavit dated 02.07.2016 as Mark D1 of the accused are already on record and suggestions have been given by the accused while cross-examining the witness that the said documents were executed before the police under pressure. It was further observed that thus, in the said circumstances, the evidence of Notary Public who is stated to have attested the said documents would be necessary for the proper adjudication of the case. It was also observed that no prejudice would be caused to the petitioner as he would get an opportunity to cross-examine the said witness. The observations made in the impugned order have not been contradicted.

Section 311 of Cr.P.C. specifically provides that any Court may, at any stage of the proceedings may 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 would

have power to summon and examine or recall and re-examine any such person if his evidence appears to be essential for the just and proper adjudication of the case. The language employed in the said Section is very wide. The Judicial Magistrate Ist Class, Abohar in the present case, found that the evidence of the Notary Public is essential for the just and fair decision of the case and thus, allowed the application under Section 311 of Cr.P.C. filed by the complainant/respondent in the proceedings under Section 138 of the Negotiable Instruments Act, 1881. This Court is also of the opinion that the said evidence is necessary for the just and fair decision of the case. The impugned order has been correctly passed and there is no illegality or infirmity in the said order so as to interfere with the same.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

10.05.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**