

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

**CRM-M No.24613 of 2022
Date of decision : 30.08.2022**

Anil Kumar Bansal

....Petitioner

Versus

M/s Pavitar Agro Industries and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Gagandeep Rana, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

This is a petition filed under Section 482 Cr.P.C. seeking quashing of the order dated 9th of May, 2022 (Annexure P-4) passed by Judicial Magistrate 1st Class, Moga whereby application dated 28th of April, 2022 filed under Section 311 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to summon Rohit Bansal @ Lala, as a witness stands rejected.

2. Petitioner filed complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent on the strength of cheque drawn for an amount of Rs.8,60,000/- which stands dishonoured for “payment stoppage by drawer”. During the trial present application under Section 311 Cr.P.C. was moved wherein it was pleaded that :-

“That in the above noted case, after the filing of the present complaint, the son of accused namely Sameer Singla @ Bunty, has started conversation regarding the present case

with the son of the complainant i.e. the proposed witness. That the son of accused Sameer @ Bundy, while in telephonic (mobile) conversation with Rohit Bansal, admitted in a very clear and unambiguous communication, regarding the taking of the above said loan by the accused and regarding the issuing of the said cheque of Rs.8,60,000/- in discharge of the above said liability, which was duly recovered by Rohit Bansal. Moreover, in the said conversation, Sameer @ Bundy also admitted regarding false claim raised by him and his father Varinder Kumar (accused no. 2) in this case, in the reply sent by the accused (to the legal notice of the Complainant)."

3. On 31st of May, 2022, Co-ordinate Bench of this Court posed following question to counsel for the petitioner :-

"...whether an alleged admission of the son of the accused is relevant evidence for conviction of accused."

4. It is settled proposition of law that for adjudication of the application under Section 311 Cr.P.C. the test is 'whether the witness sought to be examined by resorting to provision under Section 311 Cr.P.C. is essential to just decision of the case?'

5. In the considered opinion of the Court any admission made by the son of the accused cannot bind the accused and, thus his son will not be essential for just decision of the case.

6. Consequently, this Court is of the opinion that the present case does not fall within the parameters as laid down in Section 311 Cr.P.C. to

warrant summoning of the witness, as prayed for by the petitioner.

7. Accordingly, the present petition is dismissed.

August 30, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No