

227 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.1679 of 2017
Date of decision : 13.12.2022

Kuljit Kaur Petitioner

versus

Nachhattar Singh Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. S.P.Soi, Advocate and
Mr. Sahil Soi, Advocate
for the petitioner.

Mr. Ramesh Sharma, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

Present revision petition has been preferred against the order dated 11.04.2017 passed by the trial Court whereby application filed by the petitioner under Section 311 Cr.P.C. has been dismissed.

Petitioner has been summoned in a complaint case filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881. Complainant Nachhattar Singh appeared as CW-1 and was admittedly cross-examined. After defence evidence and after the statement of accused-petitioner had been recorded under Section 313 Cr.P.C. present application under Section 311 Cr.P.C. was moved with the prayer to recall the complainant-CW-1 for further cross-examination. The ground on which such prayer was made has been pleaded in the application in paras No.2 to 6 which read as under :-

2. Brief facts of the application in hand are that complainant gave description of accused/respondent in the head note of the complaint as

Kuljit Kaur daughter of Gurmit Singh, resident of Seham Kullian, Tehsil Nakodar, Distt. Jalandhar and also alleged that he served a legal notice dated 14.07.2014 on the same lady whereas applicant/accused is Kuljit Kaur daughter of Malkiat Singh, resident of Village Seham. The accused neither issued cheque in question to the complainant nor ever borrowed Rs.2Lacs from him. The cheque in question do not bear her signatures. The complainant deposed in his cross-examination that accused issued two blank cheques whereas applicant/accused is house wife having no knowledge about the law and court proceedings. CW1 Nachhattar Singh, complainant, has not been cross-examined on the said facts inadvertently and even he gave vague reply to the certain questions. Therefore, it is prayed that CW1 Nachhattar Singh, complainant, may be recalled for further cross-examination which is essential for just and fair decision of the present case and application may be allowed.

3. Upon notice, complainant filed reply to the application in hand taking preliminary objections that the application is not maintainable and the same has been filed to delay the proceedings; case is fixed for defence evidence since 26.02.2016 and till date no witness has been examined though the accused has availed sufficient opportunities; the complainant has been cross-examined at length by the previous counsel and the facts mentioned in the application were never put to the complainant by the defence counsel and now new story has been concocted though no such defence has been taken in the statement under Section 313 Cr.P.C. On merits, he denied all the submissions of the application on similar lines and prayed for dismissal of the application.

4. I have heard the Ld. counsel for complainant and learned defence counsel and have gone through the file very carefully with their able assistance.

5. Perusal of the file shows that in the present matter CW1 Nachhattar Singh, complainant, was cross-examined on 30.07.2015 and thereafter statement of CW2 Sahil Kumar, Clerk was recorded and complainant evidence was closed, on which date statement of the accused under Section 313 Cr.P.C. has also been recorded and matter was fixed for defence evidence. Thereafter, matter was adjourned for recording statement of accused under Section 315 Cr.P.C. on the application moved by her but instead of stepping into the witness box on the application moved by her, accused moved application under Section 311 Cr.P.C. for recalling CW1 Nachhattar Singh for further cross-examination on the ground that the father's name of accused has been wrongly mentioned in the complaint and cheque in question do not bear her signatures and that

the applicant never borrowed any money from the complainant but this court is of the considered opinion that all the said facts, on the basis of which the applicant prayed for recalling of CWI Nachhattar Singh for further cross-examination, were in the knowledge of accused/applicant since the inception of trial and also during the cross-examination of CWI Nachhattar Singh which was done at length. Further, in the case in hand statement of accused under Section 313 Cr.PC has been recoded wherein she has not taken any such plea that she has not borrowed the amount from the complainant and cheque in question do not bear her signatures. Rather in her statement under Section 313 Cr.P.C. she took a plea that she has already paid back the entire amount and nothing remains due but the complainant has not returned the cheque in question. The said plea of the accused is in clear contradiction to the grounds mentioned in the application in hand on the basis of which recalling of CWI Nachhattar Singh for further cross-examination is prayed for. Further, moving the application at this belated stage, also gave merit to the arguments of learned counsel for the complainant that the sole motive of the applicant for filing the present application in hand for recalling the complainant already cross-examined at length by the applicant/accused is to delay the trial which is not permissible. No doubt, under provisions of Section 311 Cr.P.C. court can summon or recall any witness at any stage of the trial, but, as per the settled proposition of law the provision U/S 311 Cr.P.C. can not be allowed to be misused by either of the parties. Moreover, accused is at liberty to put forth the aforesaid pleas in her statement on oath, under Section 315 Cr.P.C. for which the application has already been allowed.

6 As such, this court do not find any merit in the application in hand and same stands dismissed.”

Counsel for the petitioner submits that the trial Court erred in declining the application on the ground that the same has been filed at a belated stage. He contends that stage of the trial is immaterial while dealing with the prayer under Section 311 of the Code. He submits that wherever it is necessary to unearth the truth, the Court must exercise its power under Section 311 of the Code to recall the witness. Strong reliance has been placed upon ***Varsha Garg Vs. The State of Madhya Pradesh & ors., 2022***

(4) RCR (Criminal) 328 wherein Apex Court held as under :-

“28. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine section 311 of CrPC, 1973. Section 311 provides that the Court "may":

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-examine any person who has already been examined.

This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court 'shall' summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

29. The first part of the statutory provision which uses the expression 'may' postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression "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". Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.”

Per contra learned counsel for the respondent submits that admittedly the facts which are pleaded in the application were well in the knowledge of the accused when the complainant-CW-1 was examined and thus present application has been moved only with an intent to delay the trial and thus no fault can be found with the order passed by the trial Court.

I have heard learned counsel for the parties and have gone through the records of the case.

The stage of the trial is immaterial for exercising jurisdiction under Section 311 of the Code. In the considered opinion of this Court, the trial Court ought not have rejected the application filed by the petitioner

under Section 311 of the Code merely on the ground that the same has been moved at a belated stage. The positive case pleaded by the petitioner is that the complaint has been filed against Kuljit Kaur daughter of Gurmit Singh, whereas she is Kuljit Kaur daughter of Malkiat Singh. Trite it is that the accused has a right to prove his defence and the petitioner herein has raised a plea which relates to dispute regarding the identity of the accused. The said fact cannot be said to be not necessary for adjudication of the case in hand.

Considering the aforesaid fact, the present revision petition merits acceptance and the petitioner is granted one opportunity to cross examine the complainant. However the same shall be subject to payment of costs of Rs.20,000/-.

Ordered accordingly.

(PANKAJ JAIN)
JUDGE

13.12.2022
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No