

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

CRM No.42531 of 2021 in/and
CRM-M-43138 of 2021 (O&M)
Date of Decision: February 28, 2022

M/s Usha Rani

...Petitioner

Versus

Indiabulls Financial Services Pvt. Ltd.

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. R.S. Mamli, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

CRM-42531-2021

1. Disposed of, as having been rendered infructuous.

CRM-M-43138-2021

1. The instant petition has been filed under Section 482 Cr.P.C. seeking to quash impugned order dated 20.05.2019 passed by the trial court and impugned order dated 09.09.2021 passed by the Revisional Court vide which the application under Section 311 Cr.P.C. filed by the petitioner has been dismissed.

2. Notice of motion was issued in the matter, pursuant to which Ms. Kiran Bala Jain, Advocate puts in appearance on behalf of the respondent.

3. Learned counsel for the petitioner argues that the cross-

examination of the complainant has not been done properly due to lack of briefing by the accused. It is contended that certain new things have come up in the knowledge of counsel for the accused, which are quite necessary to ask from the complainant for the just decision of the case. It is argued that both the courts below have wrongly declined the request of the petitioner to grant him an opportunity to cross-examine the complainant. Counsel for the petitioner herein would contend that enough opportunity was not given to the petitioner to cross-examine the complainant, as 17 documents were tendered into evidence along with the affidavit of the complainant on 19.09.2018. It is contended that the power vests with the court to recall or re-examine any person already examined, if such evidence appears to the court to be essential for the just decision of the case. It is also contended that in case, opportunity is not allowed to the petitioner to cross-examine the said witness, the petitioner would be fastened with the liability of repayment of loan, which loan was never taken by him. In support of his arguments, he relied upon judgment rendered by the Apex Court in the case of ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) RCR (Criminal) 726.***

4. Per contra, learned counsel appearing on behalf of the respondent raised an objection to allowing the petitioner an opportunity to cross-examine the complainant, by contending that the application itself is silent as to what kind of questions are to be put to the complainant.

5. I have heard learned counsel for the parties, apart from perusing the record.

6. Section 311 Cr.P.C. details with the power of the court to

summon material witness, or examine person present, which 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.”

7. The touchstone for exercise of powers under Section 311 Cr.P.C. is the satisfaction of the court that the evidence of any person, which comes to its notice, is essential for the just decision of the case. This power, under Section 311 Cr.P.C. can be exercised by the court at any stage of any inquiry, trial or other proceedings under the Code, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence whether documentary or oral. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

8. In the case of ***Rajender Parsad vs. Narcotic Cell, Delhi, 1999 (3) RCR (Criminal) 440***, the Apex Court while dealing with the provisions of Section 311 Cr.P.C. observed as under;

“It is a common experience in criminal courts that

defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to error is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trail of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can fore-close from correcting errors. 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. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better."

9. In the present case, a categorical stand has been taken by the petitioner that the loan was never taken by him. The petitioner requires one

opportunity to establish the same by further cross-examining the complainant. This court deems it appropriate to allow said prayer of the petitioner, as the same appears to be essential to the just decision of the case. In view of the facts and circumstances of the present case and ratio of law as laid down by the Apex Court, both the impugned orders are hereby set aside, subject to payment of Rs.10,000/- as costs to the complainant. It is stated that the matter is now fixed before the trial court for 03.03.2022, as such, the trial court is directed to give only one effective opportunity to the petitioner to further cross-examine the complainant on 03.03.2022 or any other date as convenient to the trial court, subject to payment of costs as a condition precedent. Counsel for the respondent assures this court that the complainant would be present before the trial court on 03.03.2022 i.e. the date so fixed before it.

10. It is made clear that anything observed or said by this court while deciding the instant petition shall have no effect on the merits of the case.

February 28, 2022

vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No