

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**117 CRM-40367-2022 in/and
CRM-M-41639-2022
Date of Decision: 11.11.2022**

Rupinder Kaur

... Petitioner

VS.

M/s Sahi Ram Jawahar Lal

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunny K Singla, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

CRM-40367-2022

Allowed as prayed for. Affidavit filed by the applicant/petitioner is taken on record subject to all just exceptions.

CRM stands disposed of.

Main case

The challenge in the instant petition is to the impugned order dated 26.11.2019 (Annexure P5) vide which the application under Section 311 CrPC filed by the petitioner was dismissed whereby the petitioner sought summoning of the Clerk/bank official of the HDFC Bank along with record including cheque No.000053 and the original vouchers regarding presentation of the said cheque.

The assertion made by the petitioner is that he also deposited diet money but the court below dismissed the application only on the ground that during the evidence, the petitioner himself did not summon the Clerk/bank official of the HDFC Bank and closed his evidence.

Counsel for the petitioner submits that the case is still at evidence stage where defence evidence is being led and no prejudice would be caused to either of the parties in case application under Section 311 CrPC is allowed and one opportunity is granted to the petitioner to cross-examine the bank official and bring on record the aforesaid documents.

Looking into the totality of the facts and circumstances, this Court, *prima facie*, is of the view that, it would be just and necessary, for fair adjudication of the complaint under Section 138 of the Negotiable Instruments Act, if the cheque in question along with voucher for its presentation, is produced by summoning the Clerk/bank official of the HDFC Bank and for which diet money already stands deposited by the petitioner. There is no force in the finding recorded by the court below that the application is to fulfill the lacuna in the light of the fact that application under Section 311 CrPC was made much prior in time before closing of the evidence by the petitioner. This Court has also considered the fact that still, the case is at evidence stage and when the case is fixed for 17.11.2022 for defence evidence, in that eventuality if the application under Section 311 CrPC is allowed, no prejudice is going to be caused to the parties and rather, it would be in the interest of justice, to provide one opportunity for summoning and examination of record, as stated in the application under Section 311 CrPC.

However, the application has caused little delay and the petition before this Court has also been filed at a belated stage, though fortunately, the case is at the evidence stage before the trial court.

Accordingly, this petition is allowed, and subject to cost of Rs.10,000/- to be deposited in the Lawyers' Welfare Fund.

The petitioner is granted one opportunity after the next date of hearing fixed before the trial court i.e. 17.11.2022, to cross-examine the bank official and bring on record the documents mentioned in the application under Section 311 CrPC.

Disposed of in the above terms.

11.11.2022

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No