

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

**CRM-M-48646 of 2022
Date of Decision:- 06.12.2022**

Arvind Jain

....Petitioner

Vs.

Akshay Jain

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Vipul Babuta, Advocate
for the petitioner.

KARAMJIT SINGH, J.

Petitioner has filed the present petition against the order dated 03.12.2021 passed by the Court of Judicial Magistrate 1st Class, Ludhiana, vide which the application moved by respondent/complainant under Section 311 Cr.P.C for recalling him (complainant) for his cross-examination was allowed in a criminal complaint No.COMA/520/2018, dated 11.01.2018 titled as 'Akshay Jain Vs. Arvind Jain', filed under Section 138 of Negotiable Instruments Act.

The counsel for the petitioner/accused has *inter alia* contended that the trial Court invoked the provisions of Section 311 Cr.P.C. at the fag end of the trial. The counsel for the petitioner/accused has further submitted that after hearing the arguments, the

case was fixed for 20.02.2020 for passing of final judgment by the trial Court and in the meantime, the respondent/complainant filed application Annexure P-2, under Section 311 CrPC with prayer to recall the complainant in order to complete his cross examination. The counsel for the petitioner submits that the aforesaid application was moved by the respondent at the belated stage when the trial was at its last legs and as such, there was no reason for the trial Court to allow the said application. The counsel for the petitioner has further submitted that in view of the matter, the impugned order dated 3.12.2021 (Annexure P-1) deserves to be set aside being illegal and perverse.

The counsel for the petitioner has further submitted that the petitioner filed revision petition against the impugned order but the same was dismissed by the revisional Court for want of jurisdiction vide order, Annexure P-4, dated 15.07.2022 and resultantly, the present petition has been filed under Section 482 CrPC to challenge the impugned order.

I have considered the submissions made by the counsel for the petitioner.

Section 311 Cr.PC 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”.

The Trial Court can invoke its power under Section 311 Cr.P.C to find out the truth and render a just decision. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of witnesses examined from either side. Further it is settled law that the wide discretionary power provided under Section 311 CrPC should be exercised judiciously and not arbitrarily. The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

Now advertent to the facts of the present case, it appears that the trial Court heard the final arguments and the case was posted for 20.02.2020 for orders. In the meantime, respondent/ complainant filed an application dated 14.02.2020 under Section 311 Cr.P.C. to recall the complainant for his cross examination, as by that time the complainant was only partly examined and the said application was allowed by the trial Court vide impugned order dated 03.12.2021 (Annexure P-1) and the revision petition filed against the said order was also dismissed by the concerned revisional Court, for want of jurisdiction being filed against an interlocutory order.

This Court is of the view that the testimony of the respondent/ complainant is essential for just decision of the criminal complaint Akshay Jain Vs. Arvind Jain & Anr. under Section 138 N.I. Act, which is pending in the Court of learned Judicial Magistrate Ist Class, Ludhiana. Admittedly, the incomplete testimony of the complainant could not be read into evidence by the trial Court. The application moved under Section 311 Cr.P.C. cannot be declined just on the ground that the same was moved at the last stage of the trial. The trial Court rightly allowed the application filed under Section 311 Cr.P.C. to render a just decision after taking into consideration the fact that there was over sight on the part of the Court/complainant that the cross-examination of the complainant which was deferred on the request of the defence counsel, was thereafter not concluded and remained inconclusive and said evidence is essential to the just decision of the case.

Consequently, the present petition is hereby dismissed being devoid of merits.

Copy of this order be sent to the Trial Court for information and direction to proceed further with the trial and to conclude the same expeditiously in accordance with law.

06.12.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No