

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

CRM-M-55434-2022

Date of Decision: 30.11.2022

TARUN KAMBOJ

...Petitioner

Versus

SANJEEV KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Satish Kumar, Advocate
for the petitioner.

HARSH BUNGER, J.

The petitioner has filed this petition under Section 482 of Code of Criminal Procedure, for quashing/setting aside of order dated 02.05.2022 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Karnal (Haryana) in case No.*NACT/6377/2018* titled as *Sanjeev Kumar vs TarunKamboj* under Section 138 of the Negotiable Instruments Act, whereby, the application filed under Section 311(1) of the Code of Criminal Procedure has been dismissed.

Shorn of unnecessary details, the brief facts, as would be germane for the decision of the instant case, are that respondent-Sanjeev Kumar filed a complaint under Section 138 of the Negotiable Instruments Act, which was registered at *NACT 6377/2018* titled as *Sanjeev Kumar vs TarunKamboj*. In the said complaint, respondent/complainant-Sanjeev Kumar had tendered his examination-in-

chief and he was also cross-examined. Thereafter, the statement of accused i.e. the petitioner herein was recorded under Section 313 of the Code of Criminal Procedure on 07.02.2022. It appears that in March-2022, the petitioner, herein, had filed an application under Section 311 of the Code of Criminal Procedure, for re-cross examination of the complainant. The said application was dismissed vide impugned order dated 02.05.2022 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Karnal, by observing that the complainant had been examined at length and in the application, only the law points and details of authorities have been given and it is not forthcoming as to for what purpose, the complainant who has already been examined and cross-examined at length, would be required to be called again for the purpose of evidence.

I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

Section 311 of the Code of Criminal Procedure 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 proceedings under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or re-call 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 perusal of the Section aforesaid clearly indicates that the Section aforesaid has two limbs, first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an inquiry, trial or proceedings under the Code:-

(a) to summon any one as a witness; or to examine any person present in Court; or

(b) to recall and re-examine any person whose evidence has already been recorded.

On the other hand, the second part is mandatory and compels the Court to take any of the above steps if the new evidence appears to it essential to the just decision of the case. In ***Iddar& others v. Aabida& another, 2007 (3)R.C.R. (Criminal) 909***, Hon'ble the Supreme Court held that this is supplementary provision enabling and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of these witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means.

In the instant case, a perusal of application under Section 311 of the Code of Criminal Procedure (Annexure P-2) would reveal that indeed the application contain reference to the provisions under Section 311 of the Criminal Procedure Code alongwith reference to certain judgments rendered by the Hon'ble Apex Court and apart from that, the 'so called purpose' for which the application under Section 311 of the Code of Criminal Procedure has been filed, is found only in one line in para 5 thereof, which reads as under :-

“5. That the complete re-examination of the complainant is very much necessary to arrive at the

truth and conspiracy, hence, this application under Section 311 Cr.P.C.”

A perusal of said plea would reveal that the petitioner is intending to conduct complete re-examination of the complainant, which in the light of the judicial pronouncements on Section 311 of the Code of Criminal Procedure, is not permissible. It is well settled law that the power under Section 311 of the Code of Criminal Procedure is although wide enough, however, the same is not to be exercised casually and as a mere asking of the party. Either from the application under Section 311 of the Code of Criminal Procedure or at the time of arguments before the trial Court and also before this Court, nothing has been pointed out as to for what purpose, the complete re-crossexamination of the complainant is necessary. Thus, it is not incumbent upon the trial Court to summon the complainant for his re-crossexamination merely on the bare assertions made by the accused on his request without showing any necessity in terms of Section 311 of the Code.

Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.

No doubt, the power of the Court under Section 311 of the Code of Criminal Procedure are wide enough to recall a witness at any stage,

but, the discretion vested in the Court being a judicial discretion, needs to be exercised on sound legal principles, and a witness cannot be recalled merely at the asking of a party.

Since the request is not confined to a limited cross-examination and if allowed, would enable the petitioner to go for an unrestricted and full-fledged *de novo* cross-examination of the witness, which cannot be allowed. The provisions of Section 311 of the Criminal Procedure Code cannot be used to fill up the gaps or make up the deficiencies left in the cross-examination of the witness conducted by a counsel. If witnesses are allowed to be recalled on such a ground alone, there will be no finality to their examination.

In fact, in a given case, a party may even win over a witness after his cross-examination has been concluded and then seek his recall on the pretext that the counsel who cross-examined him was not well versed in law or was not adequately briefed on facts. The course, which may possibly result in such frightening consequences cannot and should not be adopted.

In the instant case, the petitioner had filed an application under Section 311 Cr.P.C., wherein no ground at all were brought forward as to why the witness needs to be re-examined and such type of application without showing any necessity in terms of Section 311 of Cr.P.C., deserved to be dismissed.

In view of the above, I do not find any justification to interfere in the impugned order dated 02.05.2022 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Karnal, whereby, the application under Section 311(1) of the Code of Criminal Procedure filed by the petitioner for

conducting complete re-cross examination of the complainant has been dismissed.

Hence, instant petition is dismissed.

November 30, 2022
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(HARSH BUNGER)
JUDGE

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