

CRM-M-56822 of 2022

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

CRM-M-56822 of 2022

Date of decision: -06.12.2022

Vikalp Saini

.....Petitioner

Versus

Mahender Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Manvinder Sidhu, Advocate,
for the petitioner.

NAMIT KUMAR, J. (ORAL)

This petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of the order dated 02.11.2022 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Hisar, in complaint case CIS No.N Act/1760 dated 22.07.2021 whereby application filed by the respondent-complainant under Section 311 Cr.P.C. for summoning and examining the witnesses by way of additional evidence has been allowed.

Brief facts of the case are that respondent-complainant filed a complaint against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 alleging therein that respondent and petitioner are close relatives. Petitioner was in need of money for running his business and purchase of property, therefore, he borrowed money from the respondent with an assurance to repay the same. On

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repeated requests of the respondent-complainant, petitioner paid Rs.4,00,000/- only. A panchayat was convened and in the presence of the panchayat, a compromise was effected between the parties whereby petitioner agreed to pay Rs.71,50,000/- to the respondent-complainant. In order to discharge his liability petitioner issued two cheques as part payment in favour of the respondent bearing Nos.000028 dated 03.04.2021 of Rs.4,00,000/- and 000020 dated 31.05.2021 of Rs.46,50,000/-. Both the cheques were presented in the bank for encashment, however, the same were returned with the remarks 'payment stopped by drawer' vide memo dated 31.05.2021 and 08.06.2021, respectively. Hence, the respondent filed the complaint in question. On the basis of preliminary evidence, petitioner-accused was summoned, who appeared and denied the documents and settlement took place in the panchayat. He also denied the receipt of amount and issuance of cheques in question. Therefore, respondent-complainant moved an application under Section 311 Cr.P.C. for summoning and examining the witnesses by way of additional evidence, which has been allowed vide impugned order dated 02.11.2022.

Learned counsel for the petitioner submits that the trial Court has erred in allowing the application under Section 311 Cr.P.C. vide impugned order dated 02.11.2022 as the same was filed to delay the matter. It is further submitted that the provisions of Section 311 Cr.P.C. should not be allowed to be used to fill lacunae in the case. He further submits that the complainant has already availed sufficient opportunities to examine the proposed witnesses in his preliminary

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evidence and, therefore, at this belated stage application could not have been allowed. He submits that after recording of statement under Section 313 Cr.P.C. the application under Section 311 Cr.P.C. was moved for summoning and examining the witnesses as an additional evidence to prove his case. Petitioner has not even got any opportunity to cross-examine any of the witnesses and before cross-examination of the complainant who appeared as CW-1, has given the application for summoning of the additional witnesses which was allowed and the petitioner was not given any opportunity to cross-examine.

I have heard learned counsel for the petitioner and have gone through the paper book.

Before considering the submissions of learned counsel for the petitioner, it would be apposite to extract Section 311 Cr.P.C., which is reproduced as below:-

“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.”

It is apparent from the above quoted provision that the Court is vested with a broad and wholesome power to summon and examine or recall and re-examine any material witness at any stage, if his/her evidence appears to be essential to the Court for the just

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The nature and extent of the power vested in the Courts under Section 311 Criminal Procedure Code to recall witnesses was examined by the Hon'ble Apex Court in ***Hanuman Ram v. The State of Rajasthan & Ors., 2008(4) RCR (Criminal) 823***, wherein it was held that the object underlying Section 311 was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses. The Hon'ble Apex Court had observed as under:

"This is a 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 those 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 and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts. The object underlying Section 311 of the Code 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 the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not

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be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

In recent judgment rendered by the Hon'ble Apex Court in ***Criminal Appeal No.1021 of 2022 titled as "Varsha Garg Vs. State of Madhya Pradesh and others"***(decided on dated 08.08.2022), wherein the following observation has been made in paragraphs No.31 and 32 thereof:-

*"31. Summing up the position as it obtained from various decisions of this Court, namely **Rameshwar Dayal v. State of U.P. (1978) 2 SCC 518, State of W.B. v. Tulsidas Mundhra (1963) Supp 1 SCR 1, Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415, Masalti v. State of U.P. (1964) 8 SCR 133, Rajeswar Prosad Misra v. State of W.B. (1966) 1 SCR 178 and R.B. Mithani v. State of Maharashtra (1971) 1 SCC 523,** the Court held:*

"27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person

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as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the fact and circumstances of each case.”

32. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.”

From the above discussion, it is manifest that the power under Section 311 Cr.P.C. can be exercised at any stage of the proceedings for the just decision of the case.

In ***Rajendra Prasad v. Narcotic Cell, Delhi, 1999(3) R.C.R. (Criminal) 440***, the Hon'ble Apex Court held as under:

“7. 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

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relevant answers from witnesses. The adage 'to error in human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up."

Since the object is to do complete justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty.

It is apparent from the perusal of the complaint that the names of proposed witnesses i.e. Sunil Kumar, Anil Suri, Prem Kumar, Harkesh Kumar, Kashmiri Lal, Suresh Kumar Saini (JE), Inderpal Godara and Vishal have been mentioned in para no.1 of the complaint. Moreover, the names of witnesses Sunil Kumar, Anil Suri, Prem Kumar, Harkesh, Kashmiri Lal, Suresh Kumar Saini (JE) and Inderpal Godara have been mentioned at Sr. Nos.4 to 10 in the list of witnesses, attached with the complaint, who are important witnesses for the proper decision of the case.

The trial Court while allowing the application under Section 311 Cr.P.C. filed by the respondent has observed as under: -

8. By way of the present application, in order to prove his financial capacity, source of the money given to the accused, transaction took place with the accused as well as liability of the accused allegedly admitted in a Panchayat convened on 27.12.2020, applicant/complainant wants to produced some records by examining himself as well as by examining officials of the concerned Banks and the some independent witnesses, by

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way of his additional evidence. On perusal of complaint, it clears that the names of proposed witnesses i.e. Sunil Kumar, Anil Suri, Prem Kumar, Harkesh Kumar, Kashmiri Lal, Suresh Kumar Saini (JE), Inderpal Godara and Vishal have been mentioned in para no.1 of the complaint. Moreover, the names of witnesses Sunil Kumar, Anil Suri, Prem Kumar, Harkesh, Kashmiri Lal, Suresh Kumar Saini (JE) and Inderpal Godara have been mentioned at Sr. Nos. 4 to 10 in the list of witnesses, attached with the complaint, who are important witnesses, for the proper decision of the case.

9. Power under Section 311 Cr.P.C., can be invoked, at any stage, for examining any witness. But the Court has to be vigilant for bringing best evidence on the file for deciding the controversy between the parties. Mere facts that the present application has been filed at very belated stage of the case, will not debar the complainant from producing the same on the Court file, specifically when he is alleging that the production of said document are necessary for just decision of the case. Moreover, cross-examination of the complainant has not been conducted so far and no prejudice will be caused to the accused, if proposed witnesses are summoned to examine by the complainant in his additional evidence as he will get an opportunity to cross-examine them. 10. In view of the aforesaid discussion, the applicant/complainant is allowed to examine the proposed witnesses, as mentioned in para no.3 of the application in hand, in his additional evidence. Hence, the present application under Section 311 of Cr.P.C. stands allowed. However, nothing so contained in this order shall be deemed to be an expression of opinion of this Court on the final merits of the case.

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As is evident from the records, in the preliminary evidence, complainant himself has appeared as CW-1 and produced some documents and thereafter he closed his preliminary evidence. Thereafter, on the basis of preliminary evidence of the complainant, petitioner-accused was summoned who appeared and denied the documents and settlement taken place in panchayat, duly signed by the petitioner, his father (who is an advocate) and other witnesses. Petitioner has also denied the receipt of amount and issuance of cheque in question. Therefore, respondent-complainant moved an application under Section 311 Cr.P.C. for summoning and examining the witnesses as an additional evidence to prove his case.

There is no illegality or perversity in the order dated 02.11.2022 passed by the learned Judicial Magistrate Ist Class, Hisar, and, thus, the trial Court was justified in allowing the application under Section 311 Cr.P.C.

Further, no prejudice has been caused to the petitioner-accused as application under Section 311 Cr.P.C. was moved by the respondent-complainant when the case was fixed for cross-examination of the complainant.

No other point has been urged.

In view of the afore-mentioned facts and circumstances and also the settled principles of law, the instant petition is bereft of any merit and the same is accordingly dismissed. Impugned order dated 02.11.2022 passed by the learned Judicial Magistrate Ist Class,

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Hisar, allowing the application under Section 311 Cr.P.C. for allowing the complainant to examine the proposed witnesses, is upheld.

06.12.2022
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether Reportable

:

Yes/No