



\$~ 18

* IN THE HIGH COURT OF DELHI AT NEWDELHI

Reserved on: July 19, 2022

Decided on: September 19, 2022

+ W.P.(CRL) 1504/2019 & CRL.M.A. 11117/2019 (STAY)

**M/S HINDUSTAN COCA-COLA
BEVERAGES PRIVATE LIMITED**

.....Petitioner

Through: Mr. Rajiv Tyagi, Mr.
Ambuj Ohja and Mr.
Rohit Gupta, Advocates.

V

SANJEEV SACHDEVA

..... Respondent

Through: Mr. S.S. Ahluwalia and
Mr. Mohit Bangwal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present petition is filed under section 482 the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.") read with article 226 of Constitution of India seeking quashing of the orders dated 01.11.2018 and 21.01.2019 passed by Shri Atul Krishna Aggrawal, ACJ-cum-CCJcum-ARC, Patiala House Courts. New Delhi, in the Criminal Complaint bearing C.C. No. 1409 of 2017 filed under Section 138 of the Negotiable Instruments Act, 1881 and for Direction(s) etc.



2. The petitioner company/ complainant filed a complaint under section 138 of Negotiable Instrument Act ,1881 against the respondent by alleging that the respondent in discharging of liability/debt issued seven cheques total amounting to Rs19,19,854/- and when said cheques were presented for payment were dishonoured by the banker of the accused/ respondent i.e Syndicate Bank, INA Colony, New Delhi on the ground of “payment stopped by the drawer”. The respondent did not pay the cheque amount despite legal notice dated 05.02.2007.

3. The Board of Directors of the petitioner vide Resolution dated 02.03.2006 appointed Shri Narinder S. Kainth, Regional Legal Counsel North, as Constituent Attorney with further power of delegation to institute legal proceedings on behalf of the petitioner. Thereafter Shri Narinder S. Kainth vide letter of Authorisation dated 25.09.2006 sub delegated the powers to Shri Sanjay Mittal and appointed him as authorised representative of petitioner in the present complaint . The petitioner subsequently appointed new authorized representative and lastly Shri Anil Rajput was appointed as authorized representative of the petitioner



vide letter of Authority dated 25.01.2018 which was signed by Shri Narinder S. Kainth in pursuance of the power of attorney dated 18.10.2012.

4. The petitioner had examined Anil Rajput as CW-2 who exhibited Board Resolution dated 02.03.2006 as exhibit CW-1/A. However, the CW-2 could not exhibit letter of Authorisation dated 25.09.2006 in favour of Sanjay Mittal through whom the present complaint was instituted in terms of the Board Resolution dated 02.03.2006 and the power of Attorney dated 18.10.2012 which are relevant documents. However, the petitioner witness CW-2 wrongly stated that he would not rely upon the documents exhibited CW-1/A i.e. Board Resolution dated 02.03.2006. CW-2 was partly cross-examined on 10.08.2018 and subsequently also and his cross-examination was completed on 25.10.2018 and was accordingly discharged. The petitioner after realising in examination in chief of CW-2 filed an application for permission to file supplementary affidavit in evidence for marking certain documents left out from marking as exhibits.



5. The case was fixed for hearing on 01.11.2018 and on that day an application seeking permission to file supplementary affidavit of CW-2/Anil Rajput was filed alongwith the copy of Power of Attorney. The said application was dismissed vide order dated 01.11.2018, the relevant portion of this order is reproduced as under:-

This application is moved without citing any provision of law. From the facts of the application, it appears ta be moved under Section 311 Cr.P.C. Through this application, complainant wants to file supplementaiy evidence affidavit of CW2 Sh. Anil Rajput stating that one Power of Attorney dated 18.10.2012 as Ex. CWI/A has to be exhibited along with dispatch proof of legal notice as Ex. CW1/H6. However perusal of his testimony dated 10.08.2018 shows that CW2 had specifically stated that he was not relying on document Ex. CWI/A. Under such circumstances, no permission can be given to the witness to improvehis case later on. As regards; exhibition of CW1/H6 is concerned, no explanation has been given as to why the same was not exhibited during the evidence of CW2. If such applications are moved ahd allowed in this manner, there would be no end to trial which will continue for indefinite period. Even otherwise, this is a 10 years old matter and has to be expedited. Parties cannot be permitted to bring evidence in a piecemeal manner through , misc. applications . Application is without merit and stands dismissed.

CE stands closed. Put up for SA on 26..11.2018.



6. The petitioner subsequently filed an application under section 311 Cr.P.C. for seeking permission to produce additional evidence i.e. the Board Resolution dated 02.03.2006 and in continuation thereof, the Letter of Authority dated 25.09.2006 and the Power of Attorney dated 18.10.2012 in favour of Shri Narinder S. Kainth which were foundational documents to prove the lawful institution and the maintainability of the Complaint. The said application was dismissed vide order dated 21.1.2019 passed by the Court of Shri. Atul Krishna Agrawal ACJ-CUM-CCJ-CUM-ARC, Patiala House Courts, New Delhi by observing :-

Vide this order, I will dispose off application u/s 311 Cr.PC moved by complainant.

Through this application complainant is seeking opportunity to lead further evidence so as to prove Power of Attorney dated 18.10.2012, resolution dated 02.03.2006 and letter of authorization dated 25.09.2006. It is stated that the Board of Directors of complainant company vide its Minutes dated 02.03.2006 had authorized Sh. N. S. Kainth its Senior Legal Executive to institute the present suit with power to sub-delegate his authority pursuant to which the present complaint was filed by Sh. Sanjay Mittal. Thereafter, Sh.N.S. Kainth was solely authorized vide Power of Attorney dated 18.10.2012 to deal with legal matters of the company with further* powers to sub-delegate pursuant to which he has sub-delegated his powers upon Sh. Anil Rajput vide letter of authorization dated 25.01.2018



appointing him as AR of the company It is stated that due to inadvertence and oversight the resolution dated 02.03.2006, letter of authorization dated 25.09.2006 and power of attorney dated 18.10.2012 were not exhibited in the evidence of CW-2. Prayer is accordingly made to exhibit the said documents.

Reply was filed by the accused to the said application wherein it is stated that law does not permit production of additional documents by calling another witness except witness who had already been examined. Further, in the present matter, the cross-examination was already closed and statement of accused has been recorded. The court had already dismissed a previous application on the same grounds on 01.11.2018. Furthermore, letter of authorization dated 25.01.2018 had already been exhibited during statement of AR. Furthermore, the AR Sh. Anil Rajput in his statement dated 10.07.2018 stated on oath that documents dated 02.03.2006 was not being relied upon. For that reason documents dated 25.09.2006 becomes inconsequential since it is based on resolution dated 02.03.2006. It is argued that through this application plaintiff wants to fulfill lacuna in this case which is not permissible. Hence, prayer is made for dismissal of the application.

I have perused the record and heard arguments addressed before me. Reliance has been placed on judgment of Hon'ble Supreme Court in the case titled as Raja Ram Prasad Yadav Vs State of Bihar & Anr., 2013(3) JCC 2179. On the other hand, counsel for complainant has relied upon judgment in case titled as Ashish Services Vs State & Ors., 2013 SCC Online Del 4753.

At the outset, it is pertinent to mention that a similar application filed by plaintiff without sighting any provision of law for the same purpose of exhibiting the .above documents, had already been



disimssed by the court on 01.12.2018. No new ground has been madeout in the present application grant of permission to exhibit the documents. It has further come on record and also observed in order dated 01.11.2018 that PW-2 Sh. Anil Rajput had expressly stated that he was not relying on Board Resolution dated 02.03.2006 which is Ex.CWI/A. The complainant cannot be permitted to improve his case. Furthermore, in the present matter complainant evidence already stands closed.

No new ground is made out to allow the present application, hence the same stands dismissed.

Matter be put up for DE for 07.02.2019.

7. The petitioner being aggrieved, filed the present petition and challenged the impugned orders on the grounds that the impugned orders were passed in a mechanical manner without due application of mind and without considering that the documents sought to be exhibited, were already on record . The trial court has not appreciated the provision under section 311 Cr.P.C. in the right perspective and impugned orders were passed against the settled law. The impugned orders are based on conjecture and surmises. It was prayed that the impugned orders be set aside.

8. The counsel for the petitioner stated and argued that the Complainant was the victim of the offence of dishonor of the Cheques committed by the accused, and by not allowing the



petitioner/complainant to prove foundational facts and related documents regarding lawful institution of the complaint, the magistrate had put the petitioner/complainant in the dock by refusing to take on record the documents of formal proof of authorization of the person who had instituted the complaint. No prejudice would have been caused to anyone if these foundational documents were allowed to be taken on record. The application under section 311 Cr.P.c should have been allowed.

9. The counsel for the respondent submits that permitting the present application would amount to the improvement to the case of the complainant, therefore, the complainant cannot be permitted to improve the case as per law. The respondent submits that it is the settled law as laid down by the Supreme Court in **Raju Ram Prasad Yadav V State of Bihar and Anr.** 2013 4 SCC 461 that the parties should not be permitted to improve their case by filing application u/s 311 of Cr.P.C with the intension to fill the lacuna in the prosecution case and prayed that petition be dismissed.

10. Section 311 Cr.P.C. deals with the power of the Court to summon material witness. It reads as under:-



311. 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.

11. In **Mohan Lal Shyamji Soni V Union of India & Others**, 1991 Supp. (1) SCC 271 the Supreme Court has held that the Court can entertain an Application under Section 311 of the Code of Criminal Procedure, 1973 (Section 540 of the Old Cr.P.C.) at any stage of enquiry, trial or other proceedings and a mandatory obligation is imposed on the Court if the evidence sought to be placed on record is essential for the just decision of the case.

12. The court in judgement titled as **Jaiveer Kashyap V State and Others** 2012 SCC online Del. 5098 observed:

11. We have considered the arguments of the parties. *Prima facie*, the allegations that have been brought to light are extremely unfortunate. However, we are mindful of the fact that the trial is continuing, and that the Court of Session is empowered under section 311, CrPC to summon material witnesses. Section 311 reads as follows:

“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.”

12. The unequivocal manner in which the section is worded (“any Court,” “at any stage,” “any inquiry, trial or other proceeding” and “any person”) indicates that there is no limitation whatsoever on the power of a Trial Court in summoning/examining persons as witnesses. This power is, in fact, coupled by a corresponding duty to exercise the aforementioned powers if the purported new evidence appears to it to be essential to the just decision of the case. The Court cannot evade its statutory responsibility by omitting to consider whether the evidence of any witness left out by the parties is essential or not (*Ram Bali v. State* AIR 1952 All 289). The court may summon witnesses, and if the prosecution declines to examine them, the court may thereupon, acting on its own initiative, cause them to be produced (*Satyendra v. Emperor* A.I.R. 1923 Cal. 463). The power of the court to examine a witness as conferred by section 311, cannot be curtailed in any manner or beyond any stage, so long as the court remains seized of the matter [*Gurdev Singh v. State*, 1982 Cr LJ 2211 (P&H)]

13. The Supreme Court observed in **Rajaram Prasad Yadav V State of Bihar & others** 2013 (3) JCC 2179 that the exercise of powers under Section 311 of the Code of Criminal Procedure, 1973 should be resorted to with the object of finding the truth or



obtaining proper truth of such facts which lead to a just and correct decision of the case.

14. In **V.N. Patil V K. Niranjan Kumar & Ors**, Criminal Appeal No. 267/2021 decided on 04.03.2021 by the Supreme Court, it was held as under:-

15. 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 the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion.”

15. It is the duty of the Court to discover the truth and truth is the foundation of the justice. Section 311 Cr.P.C. is one of the provisions which assist the Court in the discovery of the truth. It is true that the power under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reason with caution to meet the ends of justice. Simultaneously, the Court has the duty to give adequate opportunity to the parties to lead evidence for fair trial.



16. After considering all facts, the petitioner is given liberty to file additional affidavit of CW-2 Anil Rajput in evidence and to place on record the documents as mentioned in the application under section 311 Cr.P.C. and to lead evidence as per the direction to be given by the concerned Trial Court. Accordingly, the impugned orders dated 01.11.2018 and 21.01.2019 passed by Shri Atul Krishna Aggrawal, ACJ-cum-CCJcum-ARC, Patiala House Courts are set aside.

17. The present petition along with pending applications, if any, stand disposed of

SUDHIR KUMAR JAIN
(JUDGE)

SEPTEMBER 19, 2022

j/sd