

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

CRM-M-2862-2023

Date of decision : 19.01.2023

Ajay Kapoor

.....Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Raghav Soni, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court impugning the order dated 09.12.2022 passed by learned Judicial Magistrate Ist Class, Amritsar in complaint bearing No.NACT-3412 of 2018, under Section 138 of Negotiable Instruments Act vide which application moved by the petitioner/accused under Section 311 Cr.P.C. has been dismissed.

It has been contended by counsel for the petitioner that the complaint under Section 138 of Negotiable Instruments Act was filed against the petitioner by the respondent-complainant. It was alleged that the petitioner obtained friendly loan of Rs.8,30,000/- from the complainant-respondent and he issued a postdated cheque for an amount of Rs.8,30,000/- drawn on Oriental Bank of Commerce. On presentation of the cheque before the concerned Bank on 13.09.2012, the cheque was dishonored with remarks that 'opening balance insufficient'. He submits that during the course of trial, the petitioner filed application under Section 311 Cr.P.C. for recalling the complainant for cross-examination/re-examination. He has contended that after recording of

statement under Section 313 Cr.P.C. of the accused-petitioner, he changed his counsel who advised him that some vital questions have not been put to the complainant. He has contended that the petitioner handed over one letter to his counsel at the time of recording his statement under Section 313 Cr.P.C. which pertained to complaint lodged with the Kolkata Police regarding the loss of cheque. Since the letter was not handed over to the counsel at the time of cross-examination of the complainant, hence, he could not be cross-examined on the same. He submits that recalling of the complainant was must for the just decision of the case and hence, application under Section 311 Cr.P.C. for recalling the complainant was filed. However, learned trial Court has failed to appreciate the same and thus, illegally declined the application under Section 311 Cr.P.C. by passing the impugned order. He submits that the statutory provisions of Section 311 Cr.P.C. are sacrosanct in nature which can be invoked at any time before the pronouncement of the judgment but learned trial Court has failed in appreciating the same and thus, drawn a wrong conclusion in declining the application filed by the petitioner.

I have heard counsel for the petitioner and perused the record.

Evidently, the cheque of Rs.8,30,000/- was handed over by the petitioner to respondent No.2 on 12.07.2012. The cheque was dishonored on its presentation on 13.09.2012. Thereafter, respondent-complainant filed the complaint under Section 138 of Negotiable Instruments Act against the petitioner. Needless to say that the trial is pending from the last more than 10 years. The statement of the accused was recorded under Section 313 Cr.P.C. and the case is fixed for

recording defence evidence. It is evident that the trial had virtually reached at its culmination stage. However, the petitioner-accused filed the application at this stage under Section 311 Cr.P.C. for recalling/re-examination of the complainant on the ground of changing a new counsel. Besides this, it has been alleged that a complaint filed before the Kolkata Police in the year 2012 itself was to be put to the complainant.

There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For the decision of the issue involved, the provisions of Section 311 Cr.P.C. is necessary which read as under:

“311. Power to summon material witnesses, 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.”

From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328** held as under:-

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with

great caution and circumspection. The court has vide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

As per the settled law, the Court is to proceed with circumspection while dealing with the application under Section 311 Cr.P.C. It is mandate of the statute that the Court is to be satisfied that the evidence sought to be produced by way of filing petition under Section 311 Cr.P.C. is necessary for the just decision of the case. Besides this, the Court has to satisfy itself that the application filed is not for filling up the lacunae or delaying the trial. In the case in hand, the trial commenced in 2012 itself and in all these 10 years, the petitioner never raised any such ground regarding lodging of the complaint as sought to be proved by filing present application under Section 311 Cr.P.C. Simply changing the counsel and mentioning the averment of this nature when the trial is virtually at its fag end would definitely amount to delay the trial. Thus, weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the view taken by the learned trial Court. Resultantly, the petition being devoid of any merit is hereby dismissed.

19.01.2023
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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