

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-246-2022
Date of Decision: 17.08.2023

BALWANT SINGH

... Petitioner

Versus

SATISH KUMAR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Ashish Yadav, Advocate
for the petitioner.

Mr. Shashi Kumar Yadav, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the order dated 03.01.2022 passed by the JMIC, Rewari in Criminal Case No.NI/433/2016 whereby the application filed by the petitioner/complainant under Section 311 Cr.P.C. to produce certain documents/judgments has been dismissed.

2. The brief facts of the case are that the petitioner/complainant (hereinafter known as the complainant) intended to purchase agricultural land from the respondent and for the said purpose, a sum of Rs.31,50,000/- was paid to the respondent/accused (hereinafter known as the accused) including part-payment in cheque. However, the accused did not execute the sale deed and instead issued a post-dated cheque bearing No.123240103 dated 15.03.2016 for a sum of Rs.13,00,000/- from his account maintained with the HDFC Bank Ltd. Ward No.6, Railway Road, Kanina Mandi, Kanina in favour

of the complainant in partial discharge of his liability of Rs.31,50,000/-. However, the said cheque came to be dishonoured leading to the filing of a complaint under Sections 138 & 142 of the Negotiable Instruments Act. The accused came to be summoned by the Court Illaqa Magistrate, Rewari vide order dated 08.07.2016 (Annexure P-1).

3. Pursuant to the complainant leading his evidence, the statement of the accused was recorded under Section 313 Cr.P.C. wherein, he took the stand that in fact, a blank cheque had been brought by DW1-Vijay Pal from the house of the accused and was got signed by the accused under pressure on 25.07.2015 when the accused had been confined at Police Station Model Town, Rewari. The copy of the statement under Section 313 Cr.P.C. is attached as Annexure P-9 to the petition.

The statement of DW1-Vijay Pal was recorded to the similar effect that he had brought the cheque from the house of the accused to the Police Station where the accused was forced to sign the same under pressure. The copy of the statement of DW1-Vijay Pal is attached as Annexures P3/P8 to the petition.

4. Thereafter, an application was moved under Section 311 Cr.P.C. by the accused to place on record certain documents to controvert the stand taken by the accused and his witnesses that the cheque had been got signed under pressure on 25.07.2015. The copy of the application dated 15.03.2021 is attached as Annexure P-7 to the petition.

5. The said application came to be dismissed on the ground that the complainant was well-aware of the documents sought to be produced at the very outset of the trial. He ought to have placed them on record earlier and

not after the defence evidence had been closed. He had also failed to satisfy the Court that it was a *bona fide* mistake or that the said documents could not have been produced at an earlier stage and that the application had been moved merely to fill up a lacuna. The order dated 03.01.2022 passed the Court of JMIC, Rewari is impugned in the present petition.

6. The learned counsel for the petitioner contends that prior to the filing of the instant complaint, an FIR No.318 dated 09.06.2015 under Sections 420/406 IPC Police Station Model Town, Rewari had been registered at his instance against the accused. When the accused had sought bail in the said case vide application dated 31.07.2015 (Annexure P-5), no allegation whatsoever had been levelled that the cheque in question had been got signed on 25.07.2015 under pressure. In fact, the said cheque was released to the complainant on superdari vide order dated 02.05.2016 (Annexure P-6) which showed that even the Court had found the complainant to be the custodian of the said cheque. The said order remain unchallenged. He contends that the said cheque actually stood recovered by the police on 24.07.2015 as was borne out from his supplementary statement (Annexure P-4) and the recovery memo of the same date. Therefore, as these documents which he sought to produce vide the application under Section 311 Cr.P.C. would controvert the case of the accused regarding forcible signatures being obtained on the cheque on 25.07.2015 at the Police Station, they were essential to be brought on record for the just adjudication of the case. He contends that the necessity for filing of the instant application under Section 311 Cr.P.C. arose only because at the stage of the recording of the statement of the accused under Section 313 Cr.P.C. and thereafter was a specific stand taken by the accused

that the said cheque had been obtained forcefully while he had been detained at Police Station Model Town. As the said documents were essential for the just adjudication of the case, the essentiality of the evidence sought to be led was required to be seen even if it meant that a lacuna was to be filled up. Even otherwise, no serious prejudice would be caused to the accused as he would have opportunity to controvert the said documents, if so warranted. He, thus, contends that the impugned order was liable to be set aside and permission ought to be granted for leading additional evidence in terms of the application (Annexure P-7).

7. On the other hand, the learned counsel for the accused contends that all the documents sought to be brought on record by way of the instant application under Section 311 Cr.P.C. were in the possession of the complainant prior to the filing of the instant complaint and he could have very well proved the same earlier. In fact, in the order dated 02.05.2016 (Annexure P-6) whereby the cheque was handed over to the complainant, a specific stand had been taken by the accused that the said cheque had been falsely and forcibly obtained. Once, the complainant was aware of the stand that had been taken by the accused way back on 02.05.2016, the instant application filed after a defence witness had been examined was only to fill up the lacuna. It is, thus, his contention that on account of the delayed filing of the application and it having been filed to fill up the lacuna, the Trial Court had rightly dismissed the application under Section 311 Cr.P.C. and no case for setting aside of the said order was made out.

8. I have heard the learned counsel for the parties at length.

9. Before proceeding further, it would be apposite to examine Section 311 Cr.P.C., 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.”

10. The Hon'ble Supreme Court and this Court have dealt with the issue in hand in a number of cases and the relevant judgments in that regard are as under:-

In the case of Varsha Garg Versus The State of Madhya Pradesh & others, 2022(4) R.C.R. (Criminal) 328, held as under:-

“29. The first part of the statutory provision which uses the expression 'may' postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression “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”. Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.

**** **** ****

38. Having dealt with the satisfaction of the requirements of [Section 311](#), we deal with the objection of the respondents that the application should not be allowed as it will lead to

filling in the lacunae of the prosecution's case. However, even the said reason cannot be an absolute bar to allowing an application under [Section 311](#)."

In **Rajaram Prasad Yadav Versus State of Bihar & another, 2013(3) R.C.R. (Criminal) 726**, it was held as under:-

"23. From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Criminal Procedure Code read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under [Section 311](#) is noted by the Court for a just decision of a case?*
- b) The exercise of the widest discretionary power under [Section 311](#) Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) The exercise of power under [Section 311](#) Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*

g) 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.

h) The object of Section [311](#) Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section [311](#) Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

[emphasis supplied]

In **Mohanlal Shamiji Soni Versus Union of India & another, 1991(3) R.C.R.(Criminal) 182**, it was held as under:-

“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 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 facts and circumstances of each case.”

(emphasis supplied)

This Court in **Pardeep Singh & another Versus State of Haryana & another, CRM-M-47153-2018, decided on 19.10.2022**, held as under:-

12. Coming back to the facts of the present case, it may be pointed out that after the statement of the accused were recorded under Section 313 Cr.P.C. on 22.01.2018, the statement of Pardeep Singh-petitioner No.1 (accused) was recorded as DW-5 in the civil proceedings emanating out of the same transaction. It was in that situation that an

application under Section 311 Cr.P.C. was moved to produce the certified copy of the testimony of Pardeep Singh (petitioner No.1) by way of additional evidence in the present complaint. The question of Pardeep Singh being confronted with the said statement would not arise as in the present case Pardeep Singh was not examined as a witness but in fact was an accused. Even otherwise, the parties have a right to prove their case in the manner that they think fit and what evidence is sought to be produced cannot be disputed by either party. Of course, the evidentiary value of the additional evidence sought to be brought on record would be a subject matter of appreciation during the course of Trial. Further, the stage of moving of an application under Section 311 Cr.P.C. or the same amounting to the filling up of a lacuna would be subservient to the larger context of the 'essentiality of evidence' sought to be produced. In the the present case, the accused/petitioners would certainly have the right to clarify their position with respect to the statements/deposition sought to be produced in terms of Section 313 Cr.P.C. as has been rightly pointed out by the Trial Court and therefore it cannot be said that the exercise of powers by the Trial Court had resulted in causing serious prejudice to the accused resulting in miscarriage of justice.

(emphasis supplied)

This Court in **Sucha Singh Versus Dharam Singh, CRM-M-42030-2021, decided on 29.08.2022**, held as under:-

10. A perusal of Section 311 Cr.P.C. along with the judgments (supra) would clearly establish that if allowing of an application under Section 311 Cr.P.C. amounts to the filling up of a lacuna then that fact in itself is a subsidiary

factor and the Court's determination of the application should be based only on the test of the essentiality of the evidence. While, it is true that the right of the accused to a fair trial is constitutionally protected under Article 21 of the Constitution of the India, it is the duty of the Court to allow the prosecution/complainant or for that matter the accused to correct an error in the interest of justice. In the present case, apparently, the non-production of the bank statement was an oversight. Since it is a matter of record available with the bank and not something which can be prepared at a subsequent date by the complainant, it cannot be argued that since it was not exhibited earlier, it cannot be permitted to be exhibited now. Even if allowing of the application amounts to the filling up of a lacuna that fact would remain subsidiary to the larger issue of the essentiality of the evidence and fairness in the trial to all sides. If the exhibiting of the document is permitted, the accused would challenge its veracity or evidentiary value by cross-examination. Therefore, no irreparable loss shall be suffered by the accused, if the said document is permitted to be placed on record/exhibited. Even otherwise the exhibiting/placing on record of the said document is essential for the just adjudication of the case.

(emphasis supplied)

11. In the instant case, the contention of the counsel for the accused that the complainant was aware of the defence of the accused when the order of superdari was passed on 02.05.2016 cannot be accepted. The said order was passed in FIR No.318/15 under Sections 420/406 IPC Police Station Model Town, Rewari. The complainant could not pre-suppose that an argument raised at the time of hearing of an application for superdari of the cheque would be the defence the accused would take in proceeding under

Section 138 of the NI Act proceedings and therefore by pre-empting the same, exhibit the four documents now sought to be brought on record. In fact, a cause of action in favour of the complainant to move the instant application only arose when in the statement recorded under Section 313 Cr.P.C. and in the deposition of DW1, a categorical stand was taken that a blank cheque had been brought by DW1-Vijay Pal from the house of the accused and got signed by the accused-Satish Kumar under pressure on 25.07.2015 at Police Station Model Town, Rewari. It was at this stage that the necessity arose for the complainant to establish that the cheque in question had in fact been recovered by the Investigating Agency on 24.07.2015 as was evident from the bail application dated 31.07.2015 (Annexure P-5), the supplementary statement of the complainant dated 24.07.2015 (Annexure P-4) and the recovery memo dated 24.07.2015. Therefore, it cannot be said that the present application was moved at a belated stage.

As regards the question of filling up a lacuna is concerned, it may once again be pointed out that what is required is to be seen is the essentiality of the evidence sought to be brought on record. In the instant case, as the specific defence of the accused is that he had been forced to sign the cheque the only way to controvert the same would be by allowing the instant application under Section 311 Cr.P.C. whereby the four documents are sought to be brought on record three of which would *prima facie* establish the falsity of the version of the accused. Therefore, going by the “essentiality test”, it can be clearly seen that the documents referred to in the application under Section 311 Cr.P.C. are certainly essential for the just adjudication of the case and in order to do complete justice between the parties, are necessary

to be brought on record whether or not the application has been filed with a delay or with a view to filling up of a lacuna.

12. In view of the above, I find considerable merit in the present petition and therefore, the same is allowed and the order dated 03.01.2022 passed by the JMIC, Rewari is set aside.

13. The complainant shall produce on record the relevant documents/judgments referred to in the application under Section 311 Cr.P.C. (Annexure P-7) and pursuant thereto, the Trial Court shall proceed with the trial in accordance with law and conclude the same as expeditiously as possible.

14. It is made clear that nothing stated in this order is an expression on the merits of the case and the Trial Court is free to adjudicate upon the case based on the evidence led before it uninfluenced by any observations made hereinabove.

(JASJIT SINGH BEDI)
JUDGE

17.08.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No