

117(2 cases)

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

(1)

CRM-M-9262-2023 (O&M)

VIJAY KUMAR

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

(2)

CRM-M-9087-2023 (O&M)
Date of Decision : 21.02.2023

VIJAY KUMAR

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Ravi Chadda, Advocate
for the petitioner (in both the cases).

HARSH BUNGER, J.

This order shall dispose of two petitions bearing Nos. ***CRM-M-9262-2023*** titled as "***Vijay Kumar vs State of Punjab and another***" and ***CRM-M-9087-2023*** titled as "***Vijay Kumar vs State of Punjab and another***", wherein, the petitioner (in both the petitions) have challenged the order(s) dated 06.01.2023 (Annexure P-4 in both petitions) dismissing the application(s) under Section 311 of the Code of Criminal Procedure, for leading additional evidence filed by him; in proceedings arising from two separate complaint(s) under Section 138 read with Section

142 of the Negotiable Instruments Act and under Section 420 of the Indian Penal Code, filed by respondent No.2-complainant (Jagatjit Singh).

Shorn of unnecessary details, the brief facts of the case are that respondent No.2/complainant-Jagatjit Singh had filed various complaints under Section 138 of the Negotiable Instruments Act against petitioner-accused (Vijay Kumar) and others. However, during pendency of the said complaints, the matter was compromised between the petitioner along with other accused and the complainant for a sum of Rs.6,80,000/-, whereupon, the petitioner-accused (Vijay Kumar) made payments of Rs.80,000/- and Rs.30,000/-and in order to discharge his remaining joint legal liability, he (Vijay Kumar) along with RamitSikka, issued the following cheques :-

<i>Sr. No.</i>	<i>Cheque No./Date</i>	<i>Amount</i>	<i>Drawn on</i>
<i>01</i>	<i>212593/30.05.2014</i>	<i>Rs.80,000/-</i>	<i>Punjab & Sind Bank, Mota Singh Nagar Branch, Jalandhar.</i>
<i>02</i>	<i>212594/30.08.2014</i>	<i>Rs.80,000/-</i>	<i>-do-</i>
<i>03</i>	<i>212595/28.02.2015</i>	<i>Rs.80,000/-</i>	<i>-do-</i>
<i>04</i>	<i>000006/30.11.2014</i>	<i>Rs.80,000/-</i>	<i>Bank of India, Adda Bastian Branch, Jalandhar</i>
<i>05</i>	<i>000007/30.05.2015</i>	<i>Rs.80,000/-</i>	<i>-do-</i>
<i>06</i>	<i>000008/30.08.2015</i>	<i>Rs.80,000/-</i>	<i>-do-</i>
<i>07</i>	<i>000009/30.11.2015</i>	<i>Rs.90,000/-</i>	<i>-do-</i>

CRM-M-9262-2023 is in respect of **Cheque No.212594 dated 30.08.2014**, for a sum of **Rs.80,000/-**, and **CRM-M-9087-2023** is in respect of **Cheque No.212593 dated 30.05.2014**, for a sum of **Rs.80,000/-**, both drawn on **Punjab and Sind Bank, Mota Singh Nagar, Jalandhar**.

A perusal of the complaint would show that the afore-stated cheques were presented for encashment by respondent No.2-complainant through his banker; however, the same were dishonoured vide ***Memo dated 07.08.2014***(in respect ofCheque No.212593 dated 30.05.2014) and ***Memo dated 22.09.2014*** (in respect ofCheque No.212594 dated 30.08.2014). Thereafter, separate legal notices in respect of the afore-mentioned two cheques were sent and since the payments were not made; accordingly, the complaints under Section 138 of the Negotiable Instruments Act were filed before the Court below.

It is worth noticing that said two complaints i.e. ***complaint bearing No.NACT/34175/2014*** (in respect of Cheque No.212594 dated 30.08.2014) and ***complaint bearing No.NACT/29404/2014***(in respect of Cheque No.212593 dated 30.05.2014) were filed way back in the year, 2014.

Perusal of the paper books would reveal that the cases were fixed for arguments when the petitioner-accused filed applications under Section 311 of the Code of Criminal Procedure (in both the complaints), for recalling respondent No.2-complainant for cross-examination on important facts/circumstances/earlier litigation, which was stated to be necessary for adjudication of the complaints and further for examining witness from the judicial record room along with documents produced during earlier proceedings.

Perusal of the applications under Section 311 of the Code of Criminal Procedure (Annexure P-2) would reveal that the only ground for leading additional evidence is as stated in para No.9 of the application (in

both the complaints), which reads as under :-

“9. That there were many complaints which were inter-connected and the applicant was not in possession of all the complaints and even do not have the knowledge about the complaints, fate of these complaints so, the facts were not disclosed to the counsel earlier when the complainant was cross-examined.”

The above-said applications under Section 311 of the Code of Criminal Procedure, were contested by respondent No.2-complainant by filing his reply, wherein, it was categorically stated that the case was fixed for arguments and already ten dates have been taken and instead of arguing the matter, the petitioner-accused had earlier filed an application for transfer and now the application under Section 311 of the Code of Criminal Procedure, has been filed. It is the categoric stand of respondent No.2-complainant that the application has been moved by the petitioner-accused just to delay the proceedings and also that the case was at the stage of defence evidence since the year, 2015 and the counsel for the petitioner-accused had already conducted the cross-examination; accordingly, the prayer for dismissal of the application was made.

Learned Judicial Magistrate Ist Class, Jalandhar, vide impugned orders dated 06.01.2023 (Annexure P-4 in both the petitions) dismissed the applications under Section 311 of the Code of Criminal Procedure.

Learned counsel for the petitioner (in both the cases) submits that the petitioner was/were not in possession of the earlier complaints between the parties and even did not have knowledge about the same and their fate, so the facts were not disclosed to the counsel earlier when respondent no. 2-complainant was cross-examined and the witness from the

judicial record room was also not summoned alongwith documents from the earlier litigations. Accordingly, it is submitted that respondent No.2-complainant be recalled for the purpose of further cross-examination and witness from the record room be also summoned alongwith the files of previous litigations. He submits that statutory provisions of Section 311 of the Code of Criminal Procedure, 1973 can be invoked at any stage of the trial to meet the ends of justice. He has submitted that the trial Court has failed to take a judicious note of the same and has illegally declined the prayer made by the petitioner.

I have heard learned counsel for the petitioner and perused the paperbooks as well as the impugned orders with his able assistance.

Primarily the Court has to be satisfied that recalling of the witness would be essential for the just decision of the case. It is true that the Courts are not there to judge the performance of the parties in conducting their case(s) but to arrive at a correct decision in the case. However, in the absence of any evidence / explanation coming forth from the applicants to satisfy that the trial would be seriously prejudiced if the said witness is not recalled for re-examination, the Court would be justified in not exercising its jurisdiction under Section 311 of the Code of Criminal Procedure. The accused cannot have the witness recalled for re-examination as a matter of right. The Court should be satisfied that the conditions of Section 311 of the Code of Criminal Procedure, are fulfilled.

It is not disputed by learned counsel for petitioner that the complaint(s) under Section 138 of Negotiable Instruments Act has/have been pending since 2014 and detailed cross-examination of respondent No.2-complainant has already been done and the case was fixed for arguments when the application(s) under Section 311 of the Code of

Criminal Procedure were filed by the petitioner for further cross-examining the complainant. It is also not disputed that the details of the earlier litigation/complaints is mentioned alongwith the court where the said litigations were pending/decided; in the complaint(s) filed by respondent No.2-complainant.

In the present case, the recall of the witness has been sought merely on the plea that the petitioner was not in possession of the earlier complaints between the parties and even did not have knowledge about the complaints and their fate, so the facts were not disclosed to the counsel earlier when respondent No.2-complainant was cross-examined and the witness from the judicial record room was also not summoned alongwith the documents from the earlier litigations. Apparently, the said plea of the petitioner does not inspire confidence because the details of the earlier litigation / complaint(s) find mentioned in the complaints itself and it cannot be accepted that the petitioner-accused was not aware of such litigation(s), especially when he was a part of those litigations. Moreover, it is *prima facie* seen that the cheques in question, regarding which the present complaints under section 138 of N.I. Act have been filed; the said cheques were issued in order to discharge the part liability of payment of settled amount of Rs. 6,80,000/- in pursuance to amicable settlement qua earlier complaints. In case the plea that the '*facts were not disclosed to the counsel earlier*', is to be allowed, it would become a never-ending process as every time the accused finds some *lacuna* or the other in the cross-examination done earlier; a prayer for recall of the witness already examined would be made. The said course cannot be accepted. The extraordinary provision of Section 311 of the Code of Criminal Procedure,

1973 cannot be used by the accused, as an afterthought, to fill in the gaps and strengthen his case after other witnesses have been examined.

It is settled proposition of law that statutory provisions of Section 311 of the Code of Criminal Procedure, 1973 are liberal in nature; however, neither the discretion under Section 311 of the Code of Criminal Procedure, 1973 can be exercised to delay the trial nor to fill up the *lacunas* in the case. The power under Section 311 of the Code of Criminal Procedure, 1973 has been vested in Courts only where it finds that it would be essential for the just decision of the case.

The petitioner has failed to show before the trial Court as well as before this Court, as to how it would prejudice the trial in arriving at a just decision if the application(s) under Section 311 of the Code of Criminal Procedure are not allowed. Accordingly, there is no justification for allowing the application filed under Section 311 of the Code of Criminal Procedure, 1973 for recalling the witness.

Consequently, both these petitions i.e. **CRM-M-9262-2023** and **CRM-M-9087-2023**, filed under section 482 of the Code of Criminal Procedure, 1973 are bereft of any merits and the same deserve to be and are accordingly dismissed.

No other point has been urged.

All pending application/s, if any, shall stand closed.

A photocopy of this order be placed on the file of another connected case.

February 21, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No