

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-9486-2023

Date of Decision: *February 22, 2023*

M/s Jagir Machine Tools

... Petitioner

Versus

Indian Overseas Bank

.... Respondent

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Akhilesh Vyas, Advocate,
for the petitioner.

Vivek Puri, J.

The petitioner has assailed the order dated 29.09.2022 passed by the Court of learned Judicial Magistrate First Class, Amritsar vide which application under Section 311 of the Code of Criminal Procedure (for short `the Code') has been dismissed and the order dated 25.01.2023 passed by the Court of learned Sessions Judge, Amritsar vide which revision petition has been dismissed.

The petitioner has been arraigned as an accused in the complaint under Section 138 of the Negotiable Instruments Act (for short `the Act') instituted by the respondent. As per the information, the petitioner had issued a cheque of Rs. 10 lakhs in discharge of his legal debts and liabilities in favour of the respondent and the same has been dishonoured on presentation with the remarks "Exceeds Arrangement". During the course of

proceedings in the trial Court, the petitioner had moved an application under Section 311 of the Code for summoning the witnesses along with record. The application has been dismissed by the learned trial Court in terms of the order dated 29.09.2022 (Annexure P-5) and the revision preferred by the petitioner in the Court of learned Sessions Judge has also been dismissed in terms of the judgment dated 25.01.2023 (Annexure P-7).

Aggrieved by the aforesaid order/judgment, the petitioner has preferred the present petition seeking to quash/set aside the said order/judgment.

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

Learned counsel for the petitioner contends that the proposed evidence is essential for the just decision of the case and the petitioner is within his rights to produce the additional evidence as per the provisions of Section 311 of the Code. Although, there has been a delay in moving the application, but as per Section 311 of the Code, the additional evidence can be led at any stage of the trial.

The permission to lead additional evidence in the trial Court has to be granted on the touch stone of the provisions of Section 311 of the Code, which 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.”

The recourse to Section 311 of the Code is to be resorted only with an object of finding out the truth and procuring the proof of fact which may lead to just and correct decision of the case. Section 311 of the Code enables the Court with the power to summon, recall and re-examine any witness, who has already been examined. This section confers a wide discretion on the Court to act as the exigencies of justice and the circumstances of the case may require. The Court can summon any witness, if the examination of such witness appears to be essential for the just decision of the case. However, it has also to be borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case. The material on record should not indicate that there has been undue slackness on the part of the petitioner in pursuing the

matter in the trial Court. There must be material to justify for exercise of the discretionary power vested in the Court.

On advertng to the merits of the present case, the petitioner has sought to produce the following evidence:-

“a. Concerned Clerk/record keeper of Indian Overseas Bank, Branch Congress Bhawan, Hall Bazar, Amritsar to bring the certified copies of the following record duly certified as per the Bankers Book Evidence Act of the account no. 006020000007614:-

- i. Account opening form and KYC documents.*
- ii. Complete record of RTGS/NEFT date 22.04.2013 amount Rs. 7,35,000/-, including the copy of cheque, copy of RTGS/NEFT form etc.*
- iii. Complete record of RTGS/NEFT date 26.04.2013 amount Rs. 1,70,000/-, including the copy of cheque, copy of RTGS/NEFT form etc.*
- iv. Complete record of RTGS/NEFT date 14.05.2013 amount Rs. 8,35,370/-, including the copy of cheque, copy of RTGS/NEFT form etc.*
- v. Certified copy of the bank statement of the account from 01.04.2013 to 30.05.2013.*

b. Concerned Clerk/record keeper of ICICI Bank, Mall Road, Amritsar to bring the certified copies of the following record duly certified as per the Bankers Book Evidence Act of the account no. 006605500207 of Arun and Co.:-

- i. Account opening form and KYC documents.*
- ii. Complete record of RTGS/NEFT date 22.04.2013 amount Rs. 7,35,000/- received in the said account.*

- iii. Complete record of RTGS/NEFT date 26.04.2013 amount Rs. 1,70,000/-, received in the said account*
- iv. Complete record of RTGS/NEFT date 14.05.2013 amount Rs. 8,35,370/- received in the said account*
- v. Certified copy of the bank statement of the account from 01.04.2013 to 30.05.2013.*
- vi. Complete record of RTGS/NEFT date_____ amount Rs. 1,70,000/-, transferred from the account of Arun and company to the account of Kapil Enterprises including the copy of cheque, copy of RTGS/NEFT form etc.*
- vii. Certified copy of the bank statement of the account from 01.04.2013 to 30.05.2013.*
- c. Concerned clerk of the Judicial Record Room to bring along with him the complete record of the criminal complaint bearing No. NACT/8941/2017 dated of institution 08.12.20217 and date of decision 10.09.2019.*
- d. Concerned clerk/record keeper/ahlmad from the Court of Sh. Himanshu Arora, JMIC, Amritsar, to bring long with him the complete record pertaining to the complaint case bearing no. 4666/2016 pending in the Court of Sh. Himanshu Arora, JMIC, Amritsar for 10.10.2022.”*

It may be mentioned here that the learned trial Court has dismissed the application by assigning the following reasons:-

“4. After hearing both the parties and going through the record, this court is of the opinion that no doubt, under section 311 of Criminal Procedure Code, the court, at any stage of the trial can summon any person as a witness or recall and re-

examine any person who appears to be essential for the just decision of the case. However, this power cannot be exercised in a routine manner and there has to be reason justifying the same. It is settled principle of law that the power under section 311 Criminal Procedure Code cannot be exercised to fill-up the lacuna in the case. Coming to the case in hand, from the record it is transpires that the statement of the accused under section 313 of Cr.P.C. was recorded on 17.1.20 wherein the accused in his defence stated that a fraud has been committed upon the accused and to prove the defence of the accused, a list of witnesses was filed by the accused in January, 2020, the matter was pending for the evidence of the defence for more than two and a half year. After affording a very fair opportunity of leading defence evidence, including several last opportunities, the defence counsel vide his separate statement closed the oral evidence of the defence and the matter was adjourned only for the documentary evidence of the accused. In these circumstances with no stretch of imagination it can be perceived that a fair opportunity was not given to the accused and any prejudice has been caused to him. Now when the case was at the stage of documentary evidence of the defence subject to last opportunity, then this application was filed. The applicant/accused has not even explained any reason in the application as to why the said witnesses were not examined earlier. It appears that the application has been filed not only with the objective of delaying the

trial of the present case (which is pending since past more than five years) but also to start afresh the evidence of the defence. This speaks for itself, as to how the process of law is abused and made mockery of. This by no means is permissible under section 311 of Cr.P.C. Accordingly, in view thereof, the application being devoid of any merits is hereby dismissed.”

The application under Section 311 of the Code submitted by the petitioner is silent and does not mention as to under what circumstances, the proposed evidence is essential for the just decision of the case. It has only been specified that the documents and witnesses sought to be produced are vital and necessary to bring true facts before the Court and as such, essential and necessary to prove the case of defence and for proper adjudication of the case. Significantly, the statement of the petitioner under Section 313 of the Code was recorded as back as on 17.01.2020 and the case was posted for defence evidence for the first time on 27.01.2020. The perusal of the case status annexed with the impugned order indicates that the case was adjourned for defence evidence for about 60 dates of hearing.

Faced with this situation, the learned counsel for the petitioner has pointed out that the case remain posted for defence evidence for many dates of hearing during Covid 19 Pandemic. It may be mentioned here that even otherwise the case remain posted for defence evidence for more than

30 dates of hearing. The petitioner has raised a defence in his statement under Section 313 of the Code to the effect that a fraud has been committed upon him and to prove the defence, a list of witnesses was submitted in January 2020. It has been observed by the learned trial Court that the matter remained pending for evidence for more than 2-1/2 years and fair opportunity to lead defence evidence including sufficient opportunities have been afforded to the petitioner. The defence counsel had closed the oral defence evidence and the matter was adjourned only for documentary evidence of the petitioner. The perusal of the impugned orders also indicate that the petitioner was granted last opportunity to produce the entire documentary evidence when the present application under Section 311 of the Code was moved. In these set of circumstances, there is substantial delay in moving the application. The petitioner has availed a significant number of opportunities to produce the defence evidence. It appears that the application under Section 311 of the Code has been moved with an attempt to further delay the proceedings in the trial Court. Moreover, the application under Section 311 of the Code is silent as to in what manner, the proposed evidence will be essential for the just decision of the case.

In these set of circumstances, no illegality or irregularity is made out in the impugned order/judgment passed by the Courts below.

As such, the present petition is dismissed.

February 22, 2023
vk

(Vivek Puri)
Judge

Whether reasoned/speaking:	Yes
Whether reportable :	Yes