

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

CRM-M-2286-2017

Date of decision : 28.07.2023

Satya Parkash

....Petitioner

Versus

Shri Parveen

...Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Akashdeep Singh, Advocate
for the respondent.

PANKAJ JAIN, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., the petitioner has laid challenge to order dated 6th of January, 2017 passed by Ld. Judicial Magistrate 1st Class, Gurgaon whereby the application filed by the petitioner under Section 311 Cr.P.C. to prove the pronote-cum-receipt has been rejected.

2. The petitioner wants to summon Dev Dutt, witness to the pronote. The application filed by the petitioner stands rejected by the Trial Court acknowledging that the factum of pronote-cum-receipt has been mentioned in the affidavit as well as in the complaint but the same was never exhibited at any point of time during examination of the complaint and Section 311 IPC cannot be allowed to be invoked to fill the *lacuna*. Counsel for the petitioner relies upon order dated 5th of March, 2020 passed

by this Court in CRM-M No.5272 of 2016 between the same parties in another complaint whereby the similar relief was granted to the petitioner setting aside the order passed by the Trial Court under Section 311 Cr.P.C.

The same reads as under :

“Through this petition under Section 482 Cr.P.C., complainant has laid challenge to order dated 09.02.2016 of the trial Court, whereby his application under Section 311 Cr.P.C. to exhibit pronote-cum-receipt, allegedly executed by respondent, by way of additional evidence was dismissed.

Briefly, in a complaint under Section 138 of the Negotiable Instruments Act filed by petitioner, both the sides concluded their evidence to their satisfaction. However, at the fag end, i.e. the stage of final arguments, petitioner desired to prove and exhibit a pronote-cum-receipt allegedly executed by respondent by way of additional evidence, which earlier could not be proved inadvertently as the same was produced and exhibited in a summary suit filed by the petitioner against respondent under Order 37 CPC. Thus, he moved application under Section 311 Cr.P.C. for the said purpose. The same has been dismissed after hearing both the sides by the trial Court vide impugned order.

Heard.

Having given thoughtful consideration to the rival submissions, since, pronote-cum-receipt sought to be produced by the petitioner by way of additional evidence is a necessary document, duly mentioned in para No.3 of the complaint, therefore, setting aside impugned order dated 09.02.2016 of the trial Court, petitioner is permitted to prove the same, subject to exemplary costs of Rs.75,000/- to be paid to the opposite side. Respondent-accused shall be granted an opportunity to cross-examine the complainant, if he so desires, and lead rebuttal evidence.

Disposed of.”

3. Counsel for the respondent is not in position to dispute the aforesaid fact. However, he submits that the Trial Court has rightly held that Section 311 Cr.P.C. cannot be invoked for filling up the *lacunas* and thus the present petition being without merit deserves to be dismissed.

4. I have heard counsel for the parties and have gone through records of the case.

5. There is no dispute with the proposition that the provision under Section 311 Cr.P.C. cannot be invoked to fill up the *lacuna*. Law regarding Section 311 Cr.P.C. stands well laid by the Apex Court in the case of **Mohanlal Shamji Soni Vs. Union of India (1991) Supp (1) SCC 271** observing 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.”

6. The same has been further followed by Division Bench of Apex Court in **Varsha Garg Vs. State of Madhya Pradesh & others (2022) SCC OnLine SC 986** wherein it has been held as under :

“32. This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court “shall” summon and examine or recall and re-examine any such person “if his evidence appears to the Court to be essential to the just decision of the case”. Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

33. 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.”

7. Thus, in view of the aforesaid law laid down by the Apex Court it can be safely held that provision under Section 311 Cr.P.C. can be well said that the preliminary test for invoking Section 311 Cr.P.C. is the relevance of the evidence for adjudication of the case punctuated with fair-play.

8. In the present case admittedly foundation *qua* evidence sought to be produced and proved by invoking Section 311Cr.P.C. has been well laid in the complaint. The document already stands produced in civil *lis*

between the parties. Thus, this is not a *lacuna* that leads to a situation wherein provision under Section 311 Cr.P.C. is being misused. Complainant has invoked provision of Section 311 Cr.P.C. only to prove a document which already is part of record but has not been exhibited. It is not that accused-respondent has been taken by surprise.

9. Thus, in the considered opinion of this Court application filed by the petitioner under Section 311 Cr.P.C. ought not have been dismissed by the Trial Court on the ground that the same is being invoked to fill the *lacuna*.

10. Resultantly, the present petition is allowed. The impugned order dated 6th of January, 2017 is hereby set aside. Petitioner is allowed to examine Dev Dutt, the witness to the pronote-cum-receipt in terms of application (Annexure P-2).

11. The Trial Court is directed to grant an opportunity to the petitioner in terms of this order and to proceed further with the trial.

12. This order shall be subject to payment of Rs.25,000/- to be paid by the petitioner to the respondent.

July 28, 2023
Dpr

(Pankaj Jain)
Judge

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