

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

CRM-M-15938-2023

Date of decision : 29.03.2023

Rohan Sharma**.....Petitioner****versus****Bhupesh Gogia and others****..... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present :- Mr. Ankur Ghai, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court impugning the order dated 08.02.2023 in Criminal Complaint titled as Rohan Sharma Vs. Bhupesh Gogia and others bearing registration No.COMI/544/2021 wherein second application filed by the petitioner under Section 311 Cr.P.C. for summoning the witness of Record Keeper, P.S. Division No.8, Ludhiana etc. has been illegally declined by learned trial Court.

Learned counsel for the petitioner submits that petitioner before this Court is the complainant who filed the complaint under Sections 406, 420, 467, 468, 471, 120-B of IPC. He submits that at the time of filing of the complaint, there was a specific contention made in the complaint regarding the record sought to be produced before the Court. He further submits that in the list of the witnesses, witness No.2 was specifically mentioned as Record Keeper A.C.P. (North) with Record FIR No.66/11 P.S. Division No.8 with Inquiry Report. He submits that after leading the preliminary evidence, charges have been framed on 07.01.2023. He submits that immediately thereafter, the petitioner filed the present application for summoning the Record Keeper along with record. However, learned trial Court has declined the same by observing that during the pendency of the

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complaint in last 10 years, there was no application regarding the record which is sought to be produced. He submits that the observations made by learned trial Court are totally beyond the facts and circumstances of the case and the evidence on record. He has further submitted that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and the same can be invoked by the Court at any time before the pronouncement of the judgment.

Heard. After hearing counsel for the petitioner and perusing the record, this Court do not find it necessary to issue notice to the other side. *Prima facie* it is apparent that the petitioner-complainant has made specific averment regarding the record to be produced before the Court which has been prayed in the complaint under Sections 406, 420, 467, 468, 471, 120-B of IPC, provisions of Section 311 Cr.P.C. are also sacrosanct in nature and have been incorporated by the Legislature only to find the truth in the case filed before it. This Court cannot ignore the fact that in the pursuit of the truth, Section 311 Cr.P.C. cannot be restricted taking a myopic view. Hon'ble Supreme Court in Varsha Garg vs. The State of Madhya Pradesh and others, 2022 LiveLaw (SC) 662 while examining the scope of Section 311 Cr.P.C. has held as under:-

32. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has vital role to discharge in ensuring that the causes of discovering truth as an aid in the realization of justice is manifest.

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Thus, the record sought to be produced should be allowed to be brought on record to meet the ends of justice. Resultantly, this petition is allowed. Learned trial Court is directed to provide an effective opportunity to the petitioner for producing the record to be sought as to its satisfaction.

Needless to say if the Court finds that the petitioner is misusing the liberty granted by this Court, learned trial Court should be at liberty to take reasonable action in that eventuality.

Hence, the impugned order dated 08.02.2023 is set aside.

The petition is allowed in abovesaid terms.

(RAJESH BHARDWAJ)
JUDGE

29.03.2023
m. sharma

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