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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 21.09.2023

Satish Bhatia

....Petitioner

V/s

Punish Grover and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Dinesh Kumar Prajapati, Advocate for the petitioner.

Mr. Rajesh Lamba, Advocate for the respondents.

ARUN MONGA, J. (Oral)

Challenge in the present petition filed under Section 482 Cr.P.C. is to order dated 09.02.2018 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Faridabad in complaint No.NACT 3035 of 2015 dated 07.07.2015, CNR No.HRFB03-006555-2015 titled as “**Satish Bhatia vs. Punish Grover and another**” whereby application moved by complainant-petitioner under Section 311 Cr.P.C. to lead additional evidence, was dismissed.

2. Succinctly facts first, as pleaded in the instant petition.

2.1 Initially, petitioner/complainant filed a complaint under Section 138 of Negotiable Instruments Act read with Section 420 IPC against respondents on the ground that respondent No.1, who is the proprietor of the Company, took friendly loan of Rs.40,00,000/- for his personal use and issued two cheques amounting to Rs.20,00,000/- (Twenty lakh only) each drawn on Union Bank of India, Jharsently Branch, Karnal in discharge of his legal liability, one out of which was dishonoured on its presentation with remarks “INSUFFICIENT FUNDS”. After issuance of legal notice etc., a complaint was filed. After perusing the record, respondents were summoned to face trial by the learned Court below. Despite several notices, respondent No.1 did not appear and was ultimately

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declared a proclaimed person vide order dated 15.09.2016 (Annexure P-4). However, on 16.02.2017, respondent No.1 appeared and did not plead guilty and claimed trial. On 27.11.2017, petitioner/complainant stepped into the witness box as CW-1 and was cross-examined and the matter was adjourned for 14.12.2017 for defence evidence. Thereafter, on two dates of hearing i.e., 14.12.2017 and 11.01.2018, no defence evidence was present and the case stands adjourned to 08.02.2018. At this stage, an application under Section 311 Cr.P.C. was moved by petitioner-complainant seeking permission to lead additional evidence by way of tendering relevant documents i.e., Agreement dated 13.10.2013 (Annexure P-10) duly signed by both the parties on the ground that earlier the said agreement was not traceable on account of shifting of the house. The application was rejected by learned Court below on the ground that petitioner-complainant has nowhere mentioned about the execution of any agreement between the parties regarding the advancement of loan. Moreover, during his cross-examination also he stated that no written document was prepared for the advancement of loan transaction and now at this stage, petitioner-complainant wanted to project a new ground, which is not permissible.

2.2 Aggrieved, petitioner filed revision petition before learned Additional Sessions Judge, Faridabad but the same was withdrawn with liberty to file petition under Section 482 Cr.P.C. before the High Court.

3. Learned counsel for the petitioner contends that defence evidence of the respondents has yet to start. The Court below without granting an opportunity of hearing to lead additional evidence has dismissed the application which is illegal and improper. The same was necessary for just, proper and fair adjudication of the case.

4. Learned counsel for the respondents submits that application has rightly been rejected by the Court below as the same is not maintainable. He

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further submits that petitioner in his cross-examination specifically stated that no document was executed regarding the advancement of loan.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. It is now axiomatic that Section 311 of the Cr.P.C. is a discretionary power vested in Court which has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meets the ends of justice. Reference may be had to **V.N. Patil Vs. Niranjan Kumar**¹. The Supreme Court in **J.K. International Vs. State (Government of NCT of Delhi)**² observed that an application under Section 311 Cr.P.C. cannot be dismissed merely on the ground that it will lead to filling in the loopholes of the prosecution case. Power must be exercised wherever the Court finds that any evidence is essential for the just decision of the case and is not constrained by the closure of evidence.

7. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein, unless afforded an effective opportunity to lead additional evidence which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to petitioner for tendering the document in additional evidence

8. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, I deem it appropriate to grant one effective opportunity to petitioner for production and proof of the document in additional evidence. Accordingly, present petition is allowed and the impugned order dated

¹ (2021) 3 SCC 661

² (2001) 3 SCC 462

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09.02.2018 (Annexure P-1) is set aside. Learned Court below is directed to give one effective opportunity to petitioner for production and proof of the document in additional evidence in accordance with law, subject to objections to be raised by the respondents.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 21, 2023
Ajay

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