

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

CRM-M-42604-2022 (O&M)

Date of decision: 28.07.2023

Nirmal Singh

....Petitioners

Versus

Bahadur Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Sanjiv Gupta, Advocate for the petitioner

Mr. I.S. Kooner, Advocate for respondent.

AMAN CHAUDHARY. J.

1. The present petition has been filed under Section 482 CrPC for quashing of order dated 11.07.2022, in Complaint No.599/2017 dated 09.02.2017 under Section 138 of the Negotiable Instruments Act vide which an application under Section 311 CrPC for recalling of witness Bahadur Singh has been dismissed.

2. Learned counsel contends that the complaint filed by respondent was not signed by him but by someone else. He therefore filed an application under Section 311 CrPC for recalling the complainant-Bahadur Singh to pose questions with regard to the same, which came to be wrongly dismissed. Grave prejudice would be caused to the petitioner, if he is deprived of this opportunity.

3. Learned counsel for respondent submits that the report of the handwriting expert Dr. Inderjit Singh has already been obtained, thus, there is no necessity to recall the complainant, who has already been cross-examined at length. Furthermore, once the complainant-respondent admits his signatures, as has been rightly observed by the trial Court while dismissing the application, there is no reason for re-examination of the complainant, as he is the best person to

verify the signatures.

4. Heard.

5. It would be apposite to refer to Section 311 Cr.P.C., which reads thus:

"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.

6. No doubt the power conferred on the Court under the above provision is wide and wholesome to summon any person or even recall witnesses for re-examination or further examination, necessary in the interest of justice, if the facts and circumstances call for, so as to arrive at a just decision of the case but the said power has to be used with due circumspection.

7. Recourse may be had by the Courts to power under Section 311 CrPC only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision as held by Hon'ble The Supreme Court in **Zahira Habibulla H. Sheikh vs. State of Gujarat**, 2004 (4) SCC 158, which in the present case the trial Court rightly declined the prayer, finding it not essential to recall the complainant and observed thus:

“I have heard the learned counsels for both the parties and have gone through the judicial record carefully and minutely. The learned counsel for the accused moved this application to reexamine the complainant, who has already been examined on the ground that he wants to put some material questions to the complainant with regard to the signature of the complainant on the present complaint. On the other hand, the learned counsel for the complainant argued that now accused wants to delay the proceedings of the case by misusing the process of law and he was not vigilant at any stage of the proceedings. Moreover, the

present complaint is fixed for evidence of complainant and no such permission taken by the accused to examine the expert and take photographs of documents nor the said report is proved or required under law. Further the said expert report has no relevancy at this stage. The complainant is the best person to verify his signatures and he identify his signature on complaint and other documents relied upon by him. So the present application has no relevancy nor the fact regarding putting question to complainant with regard to his signatures on the basis of expert report, which is not exhibited and proved document. Accordingly, the application in hand is no merit and the same is hereby dismissed."

8. The trial Court has taken due care by not exercising the power under this section, as there is no justification or explanation to recall the complainant and as had been held by Hon'ble The Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328, the power under Section 311 CrPC should be exercised only for strong and valid reasons and with great caution and circumspection.

9. Considering the facts and circumstances of the case in light of the aforesaid principles, this Court finds no illegality or perversity in the impugned order passed by the trial Court and does not call for any interference. Accordingly, the present petition being bereft of merits is dismissed.

(AMAN CHAUDHARY)
JUDGE

28.07.2023
S.Sharma(syr)

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