

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

**CRM-M No. 38048 of 2019
Reserved on: 29.11.2023
Pronounced on : 02.12.2023**

BALJINDER KUMAR

... Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Sandeep Kumar, Advocate
for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab.

None for respondent No.2.

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SANJIV BERRY, J.

The instant petition under Section 482 Cr.P.C. has been preferred by the petitioner for setting aside of the impugned order dated 26.07.2019 (Annexure P-7) passed by learned Trial Court in Complaint filed under Section 138 of the Negotiable Instrument Act read with Section 420 of IPC in Complaint No. COMA 4306 No. 2015, titled as Ravinder Kumar Behl Vs. Baljinder Kumar whereby the application filed by the respondent No.2 under Section 311 Cr.P.C for calling of additional witnesses was allowed despite the fact that the same application for calling

the same witnesses was already rejected by the same Court vide order dated 15.02.2019 (Annexure P-4).

2. In nutshell the brief facts of the case are that a complaint under Section 138 of the Negotiable Instrument Act was preferred by the respondent No.2 against the petitioner bearing *No. COMA 4306 No. 2015, titled as Ravinder Kumar Behl Vs. Baljinder Kumar*, wherein the petitioner had been summoned to face trial as an accused. During the course of trial complainant himself stepped into as CW1 and examined Suresh Kumar as CW-2 and the evidence of the complainant was closed by order on 21.02.2018. Thereafter statement of the accused under Section 313 was recorded and the defence evidence started on 24.04.2018.

3. While the case was pending for defence evidence in the trial Court an application dated 15.01.2019 was moved under Section 311 Cr.P.C. for calling of two bank officials as additional witnesses as per Annexure P-2. The reply thereof, was filed (Annexure P-3) dated 28.01.2019 and learned trial Court after hearing the arguments on the application dismissed the application under Section 311 Cr.P.C vide order dated 15.02.2019 (Annexure P-4).

4. Thereafter, another application dated 25.03.2019 (Annexure P-5) under Section 311 Cr.P.C was filed by the complainant for examining of the same witnesses as were mentioned in the earlier application and the factum that earlier application having similar prayer have already been dismissed, was concealed. Reply was filed on 17.05.2019 (Annexure P-6) and the learned trial Court passed the impugned order dated 26.07.2019 (Annexure

P-7) allowing the application filed under Section 311 Cr.P.C. Aggrieved by the same the present petition has been preferred.

5. Initially respondent No.2-complainant was represented by counsel but later on none came forward to contest the petition on behalf of the respondent No.2- complainant.

6. It is *inter alia* contended by learned counsel for the petitioner that the petitioner had been summoned to face trial on the complaint filed under Section 138 of the Negotiable Instrument Act wherein evidence of the complainant-respondent No.2 was closed by order. He submits that thereafter, the statement of accused under Section 313 Cr.P.C was recorded and the case was fixed for defence evidence. At that time, the complainant-respondent No.2 moved an application under Section 311 Cr.P.C (Annexure P-2) which was dismissed on 15.02.2019 by learned trial Court after taking reply vide (Annexure P-4). He submits that the complainant did not file any revision against the same, however after the transfer of the Presiding Officer, he again moved an application dated 25.03.2019 under Section 311 Cr.P.C. (Annexure P-5) on the same ground by concealing the factum of dismissal of earlier application which was allowed vide order dated 26.07.2019 by learned trial Court (Annexure P-7) He submits that the Criminal Court has no power to review its own order as such the impugned order is liable to be set aside.

7. After considering the submissions made by learned counsel for the petitioner and perusing the record, it is evident that the petitioner was facing trial in Complaint dated 13.07.2015 (Annexure P-1) having been

summoned under Section 138 of the Negotiable Instrument Act wherein the complainant himself appeared in the witness box as CW-1 and examined Suresh as CW-2 and as he failed to conclude the evidence the trial Court proceeded to close the evidence of the complainant vide order dated 21.02.2018. It transpires that when the case was fixed for defence evidence the complainant moved an application (Annexure P-2) on 15.01.2019 under Section 311 Cr.P.C for summoning of Bank officials as witness, however the same was declined vide detailed order dated 15.02.2019 (Annexure P-4) passed by learned trial Court. It is evident from the perusal of file, that thereafter, the Presiding Officer of the Court got transferred and new incumbent took charge, then the complainant again moved same application under Section 311 Cr.P.C for summoning of the same witnesses by concealing the factum of earlier dismissal of the application dated 25.03.2019 (Annexure P-5), reply thereto was filed on 17.05.2019 (Annexure P-6) wherein the factum of dismissal of earlier application vide order dated 15.02.2019 (Annexure P-4) was specifically mentioned. However, the learned trial Court proceeded to pass the impugned order dated 26.07.2019 (Annexure P-7). A bare perusal of the impugned order reveals that the learned trial Court was aware to the fact that the earlier application under Section 311 Cr.P.C. have been dismissed by its Predecessor but tried to distinguish both the applications by saying that the instant application has been moved in order to bring discrepancy stand taken by accused regarding the reason for dishonour of the cheque, which according to it was not therein in the earlier application. However, perusing the entire record, this Court is

unable to expect this ground taken by learned trial Court in allowing the application to be sustainable in the eyes of law. It is not disputed that the dismissal of earlier application vide order dated 15.02.2019 was qua summoning of Bank officials of Punjab National Bank, Basti, Jodhewal, Ludhiana and State Bank of India, Rahoon Road, Ludhiana who were intended to be summoned vide the earlier application for the purpose of bringing the factum about the dishonour of cheque. Previous application was dealt with by passing detailed order dated 15.02.2019 (Annexure P-4) dismissing the application.

8. In the subsequent application decided vide impugned order dated 26.07.2019 (Annexure P-7) the complainant has again stood to examine the official witness of State Bank of India, Rahon Road, Ludhiana to prove that the complainant has come to know that the accused had made an application for stopping the payment before the said witness and on this ground the 2nd application has been allowed. It is worth mentioning that while leading evidence the complainant is not supposed to clarify the defence taken by the accused while leading his own evidence. Moreover the summoning of the same witnesses has earlier been declined vide order dated 15.02.2019 by learned trial Court and admittedly no revision against the same has ever been preferred by the complainant and the order had attained finality. Moving of another application on the same ground is nothing but abuse of process of law and subsequently when the ground for examination of same witness are not relevant at the stage of complainant evidence.

9. As a consequent to the above discussion, the learned trial

Court failed in error in passing the impugned order dated 26.07.2019 (Annexure P-7) passed by Judicial Magistrate First Class, Ludhiana, which is found not sustainable in the eyes of law and the same is hereby set aside.

10. The Petition stands allowed.

11. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

(SANJIV BERRY)
JUDGE

02.12.2023

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i)	Whether speaking/reasoned?	Yes/No
ii)	Whether reportable?	Yes/No