

120**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-42789-2023 (O&M)****Date of decision: 29.08.2023**

Neelam

....Petitioner

Versus

Veena

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Naveen Bawa, Advocate, for petitioner.

ARUN MONGA, J. (ORAL)

This is a petition under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking quashing of impugned order dated 21.02.2023 (Annexure P-5) passed by learned JMIC, Ludhiana, in COMA/24664/2019 dated 31.07.2019 titled 'Neelam Vs. Veena' whereby evidence of the complainant/petitioner was closed as well as quashing of order dated 14.07.2023 (Annexure P-7) whereby his application filed under Section 311 Cr.P.C. for recalling of the petitioner for her cross-examination, was dismissed.

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

2.1 A complaint under section 138 of Negotiable Instruments Act, 1881 (for short 'NI Act'), was filed by petitioner against the respondent, who was known to her. It was alleged that respondent approached the complainant/petitioner for some financial help to the tune of Rs 2,65,000/- and in the month of January 2019, petitioner gave the above said amount to the respondent. Respondent in order to discharge her legally enforceable debt, issued one cheque of Rs.2,65,000/- in favour of the petitioner but same was returned unpaid by the banker of the respondent with remarks 'Funds insufficient'. In due course, complaint (Annexure P-1) under section 138 of NI Act was filed against respondent by petitioner.

2.2. Respondent was summoned to face trial vide order dated 31.07.2019 passed by learned JMIC, Ludhiana. Pursuant of the said order, respondent appeared. Notice of accusation was served upon her vide order dated 03.01.2020 (Annexure P-2) and case was adjourned to 17.02.2020 for cross examination of complainant/petitioner. On that date an application under section 143-A of NI Act was filed for making the payment of interim compensation to petitioner and in the application, notice was issued to the respondent. Case was then adjourned to 03.03.2020 for filing reply to the application and on that date, the application for exemption of personal appearance of respondent was filed. Same was allowed and the case was adjourned to 20.03.2020 to file the reply of the application. On that date, the case was again adjourned to 24.04.2020 for filing reply to application and on that date due to the pandemic COVID-19, the case was adjourned to 08.05.2020 and kept getting adjourned till 23.11.2020.

2.3. On 28.01.2021, case was taken up and was adjourned to 05.02.2021 for filing reply to the application and then to 10.03.2021 for consideration on application. Vide order dated 12.10.2021, the statement of the petitioner was recorded that she had received Rs. 26,500/- as amount of interim compensation from respondent and the case was posted for 16.11.2021 for cross-examination of complainant/petitioner and from 16.11.2021 to 06.02.2023, the case remained pending for the cross-examination of the petitioner (Annexure P-4 collectively) and on that date the case was adjourned to 21.02.2023. On resumed hearing on 21.02.2023, the impugned order was passed and the evidence of the petitioner was closed by order by drawing the inference that the petitioner is not interested in facing her cross-examination (Annexure P-5).

2.4. After passing the above said order, the case was fixed for recording statement of respondent under Section 313 of Cr.P.C and the case was fixed for 24.08.2023. Meanwhile, petitioner moved an application under Section 311 Cr.P.C. before learned trial Magistrate for recalling the petitioner for her cross-examination and the same was also dismissed vide impugned order dated 14.07.2023. Hence, the present petition.

3. Given the nature of order being passed, there is no necessity to issue notice to the respondent, as no serious prejudice would be caused to her. Notice to respondent herein is thus dispensed with.

4. I have heard learned counsel for petitioner and gone through the case file.

5. 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. Niranjana 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.

6. 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 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 complainant/petitioner to adduce/conclude evidence, notwithstanding that evidence of complainant was closed by impugned order of the Court dated 21.02.2023 (Annexure P-5).

7. 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 complainant/petitioner to conclude evidence. Accordingly, the instant petition is allowed and the impugned orders dated 21.02.2023 and 14.07.2023 (Annexures P-5 and P-7 respectively) are set aside. Learned trial Magistrate is directed to give one effective

¹ (2021) 3 SCC 661

opportunity to complainant/petitioner for concluding her evidence, subject to payment of costs of Rs.5,000/- to be paid to respondent, which shall be a condition precedent. If the costs are not paid, as directed, the impugned orders shall stand restored.

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

(ARUN MONGA)
JUDGE

29.08.2023
'D'Vir

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