

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

CRR-2145-2022

Date of decision : 09.02.2023

Avtar Singh

...Petitioner

Vs.

M/S PKF Finance Ltd.

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Mukesh Kumar Bhatnagar, Advocate
for the petitioner.
Mr. Rohit Sood, Advocate and Ms. Kuljit Kaur, Advocate
for the respondent.

DEEPAK MANCHANDA, J.(Oral)

Petitioner is aggrieved against the order dated 29.08.2022 passed by Judicial Magistrate First Class, Jalandhar in complaint case bearing No.CIS No.NACT-33-2017 filed under Section 138 Negotiable Instruments Act, 1881, whereby opportunity given to the accused/petitioner for cross-examination of CW-1 has been treated as Nil and complainant also closed his evidence.

The facts in brief leading to the present revision petition filed under Section 401 of Cr.P.C are that petitioner took a loan from the respondent/complainant for purchase of old harvester combine, make Nabh Kiran 1313, Model 2015, which was duly sanctioned to the tune of Rs.7,00,000/- through an agreement executed on 16.04.2016, wherein it was agreed to return the loan amount to the tune of Rs.9,72,000/- (including of interest and two payable insurance in 34 monthly installments). Each monthly installment was to be paid on or before 16th of each month starting from 16.04.2016 and in case of delay in payment, it was

agreed that overdue charges @ 3% per month shall be charged on delayed payment. Thereafter, petitioner, after execution of the loan agreement made the payment of installments to the complainant, however, after payment of some installments, he failed to make the remaining payments as per terms and conditions of the loan agreement. Therefore, the petitioner in order to discharge his liability, issued a cheque bearing No.000007 dated 17.10.2016 amounting to Rs.7,00,000/- in favour of complainant, but when complainant presented the said cheque for encashment, the same was dishonoured with the remarks "Funds Insufficient". Upon dishonour, complainant apprised the petitioner/accused about the same, but petitioner did not respond to the same. Therefore, a legal notice dated 22.11.2016 was sent to the petitioner under Section 138 Negotiable Instruments Act, 1881. Despite the service of the legal notice, the petitioner/accused failed to make the payment to the complainant within the statutory period of 15 days. Therefore, the complainant by instituting the complaint dated 27.09.2017 prayed for prosecution of accused/petitioner for the commission of offence punishable under Section 138 Negotiable Instruments Act, 1881.

After initiation of the proceedings under Section 138 Negotiable Instruments Act, 1881, on 29.07.2022, a request was made by the complainant to substitute its authorized representative, in view of fresh resolution passed by its Board in the meeting held on 15.12.2018. The application filed by complainant was allowed. Thereafter, the matter was fixed for 29.08.2022, but counsel for the petitioner could not cross-examine the witness on account of being busy in some other Court, therefore, trial Court treated the opportunity given to the petitioner/accused for the cross-examination of CW-1, as NIL and

resultantly, closed the evidence of the complainant and fixed the case for 08.09.2022 for recording the statement of accused under Section 313 Cr.P.C. Hence the present petition.

Learned counsel for the petitioner contends that the trial Court has committed an error in not granting the petitioner an opportunity to cross-examine CW-1, who is the main witness. He further contends that the cross-examination of the witness-CW-1 is necessary for the just decision of the case and the same would not prejudice the rights of the respondent-complainant in any manner. Therefore, he prays for setting aside the impugned order dated 29.08.2022 and seeks one more opportunity to cross-examine the witness-CW-1.

On the contrary, learned counsel for the respondent/complainant has opposed the prayer and argued that the petitioner was given sufficient opportunity to conclude his evidence, but he failed to do so, therefore, the Court has rightly passed the impugned order dated 29.08.2022. He prays for dismissal of the revision petition.

I have heard learned counsel for the parties and have gone through the case file carefully.

The Karnataka High Court in case of Sri. H. Suresh Vs. S.H. Prema, 2022(2) NIJ 525 held as under:-

9. The fact remains that the learned counsel appearing for the petitioner-accused has not been able to cross-examine the complainant at any point in time in the proceeding. Therefore, it would become a case where there is no cross-examination permitted to the petitioner and result in miscarriage of justice. Since the petitioner is the accused, all opportunity to the accused to protect himself or defend himself should be granted, this is the purport of Section 311 of the Cr.P.C. Section 311 of the Cr. P.C. mandates that the application can be preferred at any stage of proceedings. It is apposite to refer to the judgment of the Apex

Court in the case of V.N. PATIL V.K. NIRANJAN KUMARI, wherein the Apex Court holds as follows:

"13. The scope of Section 311 of Cr.P.C. which is relevant for the present purpose is reproduced hereunder:

"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 (2021) 3 SCC 661 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."

14. The object underlying Section 311 CrPC is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

15. The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in Vijay Kumar Vs. State of U.P. [Vijay Kumar] v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] : (SCC p. 141, para 17)

"17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason."

16. This principle has been further reiterated in Mannan Shaikh v. State of W.B. [Mannan Shaikh v. State of W.B., (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547] and thereafter in Ratanlal v. Prahlad Jat [Ratanlal v. Prahlad Jat, (2017)

9 SCC 340 : (2017) 3 SCC (Cri) 729] and Swapan Kumar Chatterjee v. CBI [Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] . The relevant paragraphs of Swapan Kumar Chatterjee v. CBI [Swapan Kumar Chatterjee v.CBI], (2019) 14 SCC 328: (2019) 4 SCC (Cri) 839] are as under: (Swapan Kumar Chatterjee case Swapan Kumar Chatterjee v. CBI, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] , SCC p. 331, paras 10-11) "

10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re- examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re- examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

17. The aim of every court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under Section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

The Apex Court in its judgment rendered in **Varsha Garg Vs. The State of Madhya Pradesh and Ors. 2022(4) RCR (Criminal) 328** has observed that wide ambit of Section 311 which allows the power to be exercised at any stage and held that:

“43 The Court while reiterating the principle enunciated in

Mohanlal Shamji Soni (supra) stressed upon the wide ambit of Section 311 which allows the power to be exercised at any stage and held that:

44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts i.e.: (i) giving a discretion to the court to examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In Mohanlal Vs. Union of India this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, any court at any stage, or any enquiry or trial or other proceedings, any person and any such person clearly spells out that the section has expressed in the widest- possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

From the reading of the above-said provisions of law, it is clear that Court shall summon and examine or recall and re-examine any such person, if his evidence appears to be essential for the just decision of the case and that too at any stage. Undoubtedly, Section 311 Cr.P.C. has been enacted to enable the Court to find the truth and render a just decision, where any Court by exercising its discretionary authority at any stage of inquiry, trial or other proceedings can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any

person already examined who is expected to be able to throw light upon the matter in dispute. The object of the provisions as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

In view of the limited prayer made by the learned Counsel for the petitioner for affording one more opportunity to conclude the cross-examination of CW-1, the present petition is allowed and the impugned order dated 29.08.2022 is hereby set aside. The Trial Court is directed to grant one more last/effective opportunity to the petitioner to conclude cross- examination of CW-1. However, it is made clear that no further opportunity shall be granted for the same.

(DEEPAK MANCHANDA)
JUDGE

09.02.2023
vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No