

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

CRM-M-48190-2023
Decided on : 22.09.2023

Mejar Singh @ Major Singh

..... Petitioner

Versus

State of Punjab and ors.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sunil Agnihotri, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

1. Instant petition has been filed by the petitioner seeking quashing of the order dated 28.08.2023 in complaint No.NIA 89 dated 17.09.2016 under Section 138 of Negotiable Instruments Act (hereinafter referred to as 'the Act') passed by learned SDJM, Samrala, vide which his application under Section 311 Cr.PC for summoning three witnesses was dismissed.

2. Learned counsel for the petitioner has contended that he had filed an application under Section 311 Cr.PC for summoning the following three witnesses on his behalf:

- i) Ahlamad of the Court of Mrs. Megha Dhaliwal, Addl. Civil Judge (Sr. Div.) Samrala along with case file titled as "Major Singh vs. Jagdev Singh" Civil Suit No.135/19 pending for 06.09.2023.
- ii) Concerned clerk of State Bank of India Branch

Khanna along with statement of account

No. 65164591796 w.e.f. 01.01.2016 to 31.12.2016.

- iii) Concerned clerk of Bank of India Branch Khanna along with statement of account No.652310110002823 w.e.f. 01.01.2016 to 31.12.2016.

However, the Court below had wrongly observed that allowing the application would result in the wastage of precious time of the Court. Learned counsel has submitted that while passing the impugned order, the Court below failed to appreciate that as per the settled law, the provisions of Section 311 Cr.PC could be invoked at any stage of the trial, if the evidence or the witness sought to be summoned, was essential for ensuring justice to the parties. It was thus, submitted that since the trial of the case was still underway and the judgment had not been pronounced yet, there was no question of the trial being delayed or the precious time of the Court being wasted by the petitioner by filing the application under Section 311 Cr.PC. A prayer has, therefore, been made by the learned counsel for the petitioner for allowing the instant petition as the aforementioned three witnesses sought to be summoned by the petitioner, would help in the just adjudication of the complaint in hand.

3. Heard learned counsel for the petitioner and perused the relevant material on record.

4. As per allegations levelled in the complaint, which has been

annexed as Annexure P-1, the respondent-accused received Rs.7,50,000/- from the petitioner-complainant as earnest money on 16.02.2016 and promised to get sale deed executed qua the land measuring 2B-15B-12-3/4B situated at village Manki, Tehsil Samrala District Ludhiana @ Rs.20,50,000/- per acre in his favour. It was agreed upon between the parties that in case of failure to get the sale deed executed, the respondent-accused was to pay double the amount of earnest money being damages and expenses to the petitioner-complainant. Consequently, being part payment, the respondent-accused issued cheque No.000010 dated 09.08.2016 for an amount of Rs.10,50,000/- to the complainant, drawn on HDFC Bank, Khanna, which on presentation was dishonoured. Since the accused failed to make the payment of amount even after receipt of the statutory notice, the complaint in question was instituted against him by the petitioner.

5. No doubt, learned counsel for the petitioner has vehemently argued that the three witnesses for whose summoning he had filed an application under Section 311 Cr.PC, were essential for the just decision of the case in hand, however, perusal of his application under Section 311 Cr.PC annexed as Annexure P-4 reveals that it is completely barren as to the reasons why these three witnesses are required to be summoned and how they would be essential for the just adjudication of the complaint in hand. Furthermore, it is a matter of record that the petitioner had earlier also moved a similar application under Section 311 Cr.PC, which for reasons best known to the petitioner, was not pressed

and was dismissed as withdrawn.

6. No doubt, the provisions of Section 311 Cr.PC do empower the Court to summon material witnesses and examine them at any stage of trial, inquiry or other proceedings under Cr.PC, however, these powers under Section 311 Cr.PC have to be exercised in accordance with the principles of Criminal Law. The Hon'ble Supreme Court in ***Deputy Superintendent of Police vs. Tr.N.Seenivasagan, (decided on 01.03.2021) (Crl. Appeal Nos.231-232 of 2021)*** has categorically observed that new evidence should not be used as a disguise for retrial and the pre-condition while considering an application under Section 311 Cr.PC is that the evidence, which is sought to be summoned, is germane to the issues around which the case revolves. However, as already observed earlier no reason much less cogent finds reflected in the application filed by the petitioner under Section 311 Cr.PC (Annexure P-4) as to why these three witnesses should be summoned. Thus, this Court has no hesitation in concurring with the observations made by the Court below that the application under Section 311 Cr.PC had been filed just to fill up the lacuna, in his case, by the complainant.

7. As a sequel to the above, present petition being devoid of any merit stands dismissed.

22.09.2023
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No