

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

CRM-M No.51200 of 2023

Decided on:30.11.2023

Deepika

... Petitioner

Versus

Om Parkash

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Kumar Sharma, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. for quashing of the order dated 11.09.2023 (Annexure P-1) passed by the Judicial Magistrate 1st Class, Faridkot in complaint case titled as *Om Parkash Vs. Deepika* bearing NACT No.284 of 2021 dated 04.03.2021 (Annexure P-2) vide which the application filed by the respondent under Section 311 Cr.P.C. has been allowed.

2. Learned counsel for the petitioner *inter alia* contends that the respondent under the garb of invoking the provisions of Section 311 Cr.P.C. wants to introduce a new ground by changing his consistent stand taken in the statutory notice, which would cause great prejudice to the petitioner. It is further contended that the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act) are quasi-criminal proceedings and the summary trial is provided under Section 145 of the NI Act. The evidence can be given by way of affidavit by the complainant and such affidavit shall be read in evidence at all stages. The same can be read into evidence before the pre-summoning stage as well as the post-summoning stage. There is no

provision either in the Cr.P.C. or the NI Act for substituting the evidence already recorded. It is settled law that discretionary power conferred under Section 311 Cr.P.C. has to be exercised judiciously, as wider the power, greater is the necessity of caution while exercising judicious discretion. Power under Section 311 Cr.P.C. cannot be utilized for filling up lacunas or for making good the shortcomings in the examination-in-chief. Therefore, the impugned order dated 11.09.2023 is liable to be set aside.

3. I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

4. The determinative factor for invoking power under Section 311 Cr.P.C. for recalling or re-examination of any person already examined is that the said evidence appears to be essential and just for proper adjudication of the case and therefore, the Court is required to form an opinion whether such evidence is necessary for just and proper adjudication of the case. A perusal of the impugned order indicates that the learned trial Court has not made proper assessment of the essentiality of the purported evidence to be led by the respondent-complainant. The respondent-complainant cannot be allowed to introduce a new defence against his own consistent stand. A two judge Bench of the Hon'ble Supreme Court in ***VN Patil Vs. K. Niranjana*** in Criminal Appeal No. 267 of 2021 decided on 04.03.2021 has examined the scope of the power under Section 311 of Cr.P.C and following was observed:-

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 enquiry 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.”

5. The Hon’ble Supreme Court in ***Mohanlal Shamji Soni vs. Union of India and another, AIR 1991 SC 1346*** has observed that the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice require examination of any person which would depend on the facts and circumstances of each case. It was further observed that it would be obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab 1982 Cr.LJ 2201*** has held as under:-

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added).”

6. A perusal of the impugned order indicates that the impugned order was passed in a mechanical manner without assigning any reason. The order reflects that the learned trial Court has observed ‘...to the mind of this court, the tendering of document is very much necessary and material for the just and proper adjudication of the case’.

7. In view of the above, the impugned order is set aside and the matter is remanded back to the learned trial Court to decide the matter afresh after proper assessment of the material in the light of the settled law. The instant petition stands disposed of as above.

(HARPREET SINGH BRAR)
JUDGE

November 30, 2023

Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No