

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

CRM-M No.60841 of 2023 (O&M)

Date of Decision:04.12.2023

Surinder Kumar

... Petitioner

Versus

Dhani Ram

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Namit Khurana, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant petition under Section 482 Cr.P.C. is preferred against order dated 30.10.2023 (Annexure P-6) passed by Judicial Magistrate Ist Class, Sub-Division Bilaspur, District Yamunanagar in criminal complaint No.NIA 407/2018 dated 31.10.2018 titled as "Surinder Kumar Versus Dhani Ram" under Section 138 of Negotiable Instrument Act (hereinafter referred to as the 'NI Act'), whereby the application filed by the petitioner for examination of witnesses to compromise, was dismissed.

2. The facts of the case, briefly, are that vide registered mortgaged deed No. 3520 dated 14.01.2015, the respondent mortgaged his land measuring 19 kanals 4 marlas i.e. land measuring 5 kanals 13 marlas being 1/4 share of land measuring 22 kanals 13 marlas comprised of khewat No.1, khatauni No.1, khasra No.19//3, 4, 5 and land measuring 9 kanals 8 marlas, being 188/1358 share of land measuring 67 kanals 18 marlas comprised of khewat No.1, khatauni No.1, khasra No.2//20, 12//24/3, 20//1/1, 11/3, 22/3, 21//3, situated within revenue estate of Village Bada Damopura, H.B. No. 101, Tehsil Chhachhrauli, Distt.

Yamuna Nagar, to the petitioner for a total consideration of ₹16,00,000/-. Thereafter, vide registered sale deed No. 1315, dated 20.07.2015, the respondent sold the land measuring 40 kanals, 0 marla, situated in village Bada Damopura, Tehsil Chhachhrauli, Dist. Yamuna Nagar to Jarnail Singh, Dhoom Singh, Baldev Raj including share out of Khasra No.19//3, 4, 5. The mutation of the entire mortgaged land measuring 19 kanals 4 marlas could not be entered and sanctioned in favour of the petitioner. Further, on 12.09.2018, respondent-accused approached the petitioner-complainant and showed his willingness to redeem the abovesaid land from mortgage by paying mortgage money to petitioner. On the same day, a settlement was reduced into writing, according to which, the respondent issued a cheque No.924803 dated 12.09.2018 amounting ₹16,00,000/- in favour of the petitioner. On presentation, the said cheque dishonoured vide memo dated 13.09.2018 due to insufficient funds. Thereafter, a legal notice dated 26.09.2018 was issued to the respondent but he failed to make such payment. Accordingly, a complaint dated 31.10.2018 under Section 138 of the NI Act was filed.

3. The learned trial Court, vide order dated 23.08.2023, allowed the application filed by the petitioner to produce on record compromise dated 07.08.2015. Thereafter, on 22.09.2023, the petitioner moved an application under Section 311 Cr.P.C for examination of witnesses, which was dismissed by the trial Court vide order dated 30.10.2023.

4. Learned counsel appearing for the petitioner *inter alia* contends that examination of witnesses to the compromise deed Ex.C7 is necessary for just and proper decision of the case and denying said opportunity to the petitioner would cause him grave prejudice. It is further contended that the trial Court itself had allowed the application of the petitioner seeking production of compromise

Ex.C-7 and therefore, it fell into error in dismissing the application of the petitioner seeking examination of witnesses to prove the said document.

5. Having heard learned counsel for petitioner and after perusing the record, this Court does not find merit in the argument raised by the petitioner.

6. The power under Section 311 Cr.P.C. can be exercised for summoning of witnesses at any stage of any inquiry, trial or other proceeding under this Code and the Court may summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined. The Court can summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just adjudication of the case. The Court is required to form an opinion whether such evidence is necessary for a just and proper decision in that case.

7. A two judge Bench of the Hon'ble Supreme Court in ***VN Patil Vs. K. Niranjan in Criminal Appeal No. 267 of 2021 decided on 04.03.2021*** 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.”

The Hon'ble Supreme Court in *Mohanlal Shamji Soni vs. Union of India and another*, AIR 1991 SC 1346 has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, 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 requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is 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. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

8. No explanation came forth as to why the petitioner did not make any prayer qua examination of witnesses to the compromise when he filed application for placing on record the said compromise. The evidence of petitioner has been closed by the trial Court after giving him sufficient opportunities to examine the witnesses in order to support his case. Now the case is at the stage of recording of statement of the respondent-accused under Section 313 Cr.P.C. and therefore, now the petitioner cannot be allowed to fill up the lacuna in his case to the disadvantage of the respondent-accused.

9. Keeping in view the above discussion, this Court finds that the trial Court has rightly come to the conclusion that the application filed by the petitioner under Section 311 of Cr.P.C. is an attempt to fill up the lacunas and to prolong the trial. It has not been demonstrated as to how recalling of the witness would be essential to just decision of the case. The necessary ingredients for invoking

the power under Section 311 of are completely missing. No ground for interference is made out. Consequently, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

December 04, 2023
Pankaj*

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