

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

107.

CRR No.2803 of 2023 (O&M)

Date of Decision:07.12.2023

Kamalpreet Kaur

... Petitioner

Versus

M/s PKF Finance Limited

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Kapil Khanna, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court seeking setting aside of order dated 20.10.2023 passed by the learned Judicial Magistrate 1st Class, Jalandhar whereby the evidence of CW1 has been closed.
2. Learned counsel for the petitioner *inter alia* contends that cross-examination of CW1 Ashwani Mahajan, Managing Executive Legal Officer of the respondent-company was fixed for 20.10.2023 and on being asked a particular question by the petitioner to CW1; whether any complaint against the petitioner is pending today under Section 138 of the Negotiable Instruments Act, 1881 before the same Court, the learned trial Court observed that the said question asked by the counsel for the petitioner is not relevant to the facts of the present case. Thereafter vide impugned order dated 20.10.2023, the learned trial Court has closed the evidence of CW1. It is further contended that the question asked by the petitioner is necessary for proper adjudication of the complaint and the right of the petitioner to cross-examine the respondent-complainant cannot be scuttled in an illegal and arbitrary manner.

3. Having heard learned counsel for the petitioner and after perusing the case file, this Court find force in the contention raised by the counsel for the petitioner.
4. 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.
5. 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.

6. Cross-examination is the only tool available to an accused to test the veracity of a prosecution witness and the right to cross-examine a witness may be denied only in exceptional circumstances or in such circumstances where the order reveals a cogent reason to do so. The impugned order is bereft of any such reason and therefore, it would be in the interest of justice, if one more opportunity is granted to the petitioner to cross-examine CW1. Resultantly, the impugned order dated 20.10.2023 is set aside and the petitioner is granted one more opportunity to cross-examine CW1, subject to payment of costs of ₹5000/- payable to the respondent-complainant, which shall be condition precedent, failing which the order passed by this Court shall stand automatically vacated.

7. The instant petition stands disposed of in above terms, without issuing notice to the respondent in order to save time of the Court and to avoid litigation expenses to be incurred on the part of the respondent.

(HARPREET SINGH BRAR)
JUDGE

December 07, 2023
Pankaj*

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