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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: July 24, 2023*

+ **CRL.M.C. 4878/2019 & CRL.M.A. 36841/2019(stay)**

SANJEEV CHANANA Petitioner

Through: Mr. Ashish Upadhayay,
Advocate.

versus

M/S. TELESTRA TRADE
PLACE PVT. LTD.

..... Respondent

Through:

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under section 482 Cr.P.C. to set aside the impugned order dated 07.08.2019 passed by the court of Ms. Shruti Chaudhary, MM, Patiala House Courts in CC bearing no. 21046/2016 titled as **Telestra Trade Place Pvt. Ltd. V Jagdambe Builders Pvt. Ltd.** whereby the application under section 311 Cr.P.C. was dismissed.

2. The respondent filed a complaint under section 138 of the Negotiable Instruments Act, 1881 against the petitioner and other accused, which is stated to be pending before the concerned trial court.

3. The petitioner who is accused no. 2 before the trial court filed an application under section 311 Cr.P.C., which was dismissed vide impugned order dated 07.08.2019 by observing that the application under section 311 Cr.P.C. was filed after a prolong period of 03 years,



for which, no justification was given on behalf of the petitioner/accused no. 2 to explain the delay.

4. Section 311 Cr.P.C. deals with the power of the Court to summon material witness. It reads as under:-

“311. 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 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.”

5. In **Mohan Lal Shyamji Soni V Union of India & Others**, 1991 Supp. (1) SCC 271 the Supreme Court has held that the Court can entertain an Application under Section 311 of the Code of Criminal Procedure, 1973 (Section 540 of the Old Cr.P.C.) at any stage of enquiry, trial or other proceedings and a mandatory obligation is imposed on the Court if the evidence sought to be placed on record is essential for the just decision of the case.

6. The court in judgement titled as **Jaiveer Kashyap V State and Others** 2012 SCC online Del. 5098 observed:

“11. We have considered the arguments of the parties. Prima facie, the allegations that have been brought to light are extremely unfortunate. However, we are mindful of the fact that the trial is continuing, and that the Court of Session is empowered under section 311, CrPC to summon material witnesses. Section 311 reads as follows:



“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 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.”

12. The unequivocal manner in which the section is worded (“any Court,” “at any stage,” “any inquiry, trial or other proceeding” and “any person”) indicates that there is no limitation whatsoever on the power of a Trial Court in summoning/examining persons as witnesses. This power is, in fact, coupled by a corresponding duty to exercise the aforementioned powers if the purported new evidence appears to it to be essential to the just decision of the case. The Court cannot evade its statutory responsibility by omitting to consider whether the evidence of any witness left out by the parties is essential or not (*Ram Bali v. State* AIR 1952 All 289). The court may summon witnesses, and if the prosecution declines to examine them, the court may thereupon, acting on its own initiative, cause them to be produced (*Satyendra v. Emperor* A.I.R. 1923 Cal. 463). The power of the court to examine a witness as conferred by section 311, cannot be curtailed in any manner or beyond any stage, so long as the court remains seized of the matter [*Gurdev Singh v. State*, 1982 Cr LJ 2211 (P&H)]”

7. The Supreme Court observed in *Rajaram Prasad Yadav V State of Bihar & Others* 2013 (3) JCC 2179 that the exercise of powers under Section 311 of the Code of Criminal Procedure, 1973



should be resorted to with the object of finding the truth or obtaining proper truth of such facts which lead to a just and correct decision of the case.

8. In **V.N. Patil V K. Niranjana Kumar & Ors**, Criminal Appeal No. 267/2021 decided on 04.03.2021 by the Supreme Court, it was held as under:-

“15. 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.”

9. It is the duty of the Court to discover the truth and truth is the foundation of the justice. Section 311 Cr.P.C. is one of the provisions which assist the Court in the discovery of the truth. It is true that the power under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reason with caution to meet the ends of justice. Simultaneously, the Court has the duty to give adequate opportunity to the parties to lead evidence for fair trial.

10. The notice was ordered to be issued to the respondent but it could not be served due to incomplete address of the



respondent/complainant. The complaint is pending since long. The counsel for the petitioner stated that the respondent/complainant is not appearing even before the concerned trial court.

11. After considering all facts, the present petition is allowed. The petitioner is given one opportunity to cross-examine the respondent/complainant on the date so fixed by the concerned trial court.

12. Accordingly, the impugned order dated 07.08.2019 is set aside. However, it is made clear that the petitioner/accused no. 2 is given only one opportunity to cross-examine the respondent/complainant.

13. The present petition along with pending applications, if any, stands disposed of.

14. Copy of this order be sent to the concerned trial court for information.

(DR. SUDHIR KUMAR JAIN)
JUDGE

JULY 24, 2023

N/SD