

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M No. 7024 of 2021 (O&M)
Date of Decision: 18.04.2024

Firm M/s. Burj Muhar Petro Centre

..... Petitioner

Versus

Bharat Bhushan Bharti (Retired TTE) and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Peeush Gagneja, Advocate,
for the petitioner.

Mr. Vaibhav Narang, Advocate
for the respondents.

HARKESH MANUJA, J. (ORAL)

The petitioner-firm (complainant), by way of present petition filed under Section 482 of Cr.P.C., seeks quashing of an order dated 12.01.2021 passed by the Judicial Magistrate Ist Class, Abohar, whereby an application under Section 311 of Cr.P.C., filed at the instance of petitioner-complainant in complaint bearing NACT-508 of 2018, titled “*Firm M/s. Burj Muhar Petro Centre Versus Bharat Bhushan*”, under Sections 138-142 of the Negotiable Instruments Act (**for short “NI Act”**), stands declined.

[2] Briefly stating, on account of dishonour of cheque No. 404143 dated 06.11.2017, amounting to Rs. 1,50,000/- drawn at State Bank of India, Branch Mandi No. 4, Abohar, drawn in favour of petitioner-complainant, a complaint came to be filed at his instance against respondents followed by summoning order against them. During trial, CW-1 (Krishan Kumar) being

one of its partners, appeared on behalf of the petitioner-Firm, relevant extract from his deposition is to the following effect:-

“ I have not produce the copy of bills as mentioned in Ex. C10 Volunteer said that original bills handed over to the accused. I am in possession of the original bill books. I can produce the same in the court for further cross examination. There is no signature of accused on bill prepared by my office volunteer said that on phone call the bills were prepared. The detail of the bills are not mentioned in the complaint.”

Soon thereafter, an application came to be filed at the instance of petitioner-complainant invoking Section 311 CrP.C., seeking permission to tender and prove the following documents:-

- (i) Bills (as mentioned in para-3 of the application);
- (ii) Screenshot of messages of WhatsApp dated 14.01.2018, 15.01.2018, 29.01.2018 & 01.02.2018;
- (iii) Statement of account of the firm of complainant and that of accused by examining the accountant Ashok Kumar.

[3] The prayer made in the aforesaid application was opposed at the instance of respondents, while submitting that by way of present application, the petitioner intended to fill-up lacunae, which were left out in the deposition of CW-1. The trial Court vide order dated 12.01.2021 dismissed the said application, while submitting that the petitioner-complainant was trying to fill-up the lacunae in its case and further was not able to show the relevance of the documents sought to be produced at this belated stage.

[4] Impugning the aforesaid order, learned counsel for the petitioner submits that the documents / material sought to be produced at the

instance of petitioner are relevant for the just decision of the case; thus, the same were very much necessary to be proved on record, as the same pertained to the purchase of diesel by the respondents from the petitioner-firm. He also points out that there was no question to fill-up the lacunae in any manner as the case was still at the stage of complainant's evidence.

[5] On the other hand, learned counsel for the respondent vehemently opposes the prayer made on behalf of the petitioner, while submitting that having appeared as CW-1, Krishan Kumar never produced the bills which were now sought to be proved by invoking Section 311 Cr.P.C., though the same were well within his knowledge and thus, it was practically filling up of lacunae in the evidence left by the petitioner-Firm.

[6] After hearing learned counsel for the parties and gone through the paper-book / relevant record, I find substance in the submissions made on behalf of the petitioner.

[7] In the present case, CW-1, Krishan Kumar, who appeared on behalf of the petitioner-complainant (Firm) was cross-examined on 13.09.2019 and soon thereafter, while the matter was still fixed for recording of evidence of the complainant, the present application was filed on behalf of the petitioner-Firm, in the month of January 2020 seeking permission to lead evidence in the shape of WhatsApp messages being exchanged between the parties; as also to place on record the copies of bills regarding purchase of diesel by respondent from the petitioner-complainant (Firm) as well as the accounts statements to be proved through their Accountant, namely, Ashok Kumar. Undoubtedly, the evidence sought to be produced by the petitioner-complainant is going to help the trial Court to decide the complaint in a

complete and effective manner. Though, there has been some inadvertence on the part of the petitioner-complainant, however, such procedural technicalities cannot be applied absolutely to scuttle the substantial rights of the parties, as the procedure more or less regulates the course of proceedings only, especially in the given facts, when there is no inordinate or unexplained delay in approaching the Court while moving the present application.

In the humble opinion of this Court, even the factum of filling-up of lacunae as argued on behalf of respondent in the given facts is without substance, as CW-1, Krishan Kumar, in his cross-examination, duly deposed that the bill books could later be produced by him in the Court, however, the trial Court instead of granting him an opportunity to produce the same, ordered conclusion of his cross-examination.

[8] More importantly, the object of Section 311 Cr.P.C. is to prevent failure of justice on account of an inadvertent mistake on the part of either of the parties in bringing the valuable and relevant evidence on record and also to remove ambiguity in the statements of witness examined from either side. Applying the same, in the given facts grant of opportunity to the petitioner-complainant to lead evidence sought for in the application is essential to afford fair and proper opportunity and for just decision of the complaint and also to achieve the object of finding out the truth or in the absence, the same would cause in justice to the petitioner, thereby defeating the ends of justice. On the other hand, allowing of application under Section 311 Cr.P.C. at this stage may not cause prejudice to the respondents, who

will have opportunity to cross-examine the witnesses of the petitioner-complainant, besides leading evidence in defence.

[9] In view of the discussion made hereinabove, the impugned order dated 12.01.2021 passed by the Judicial Magistrate Ist Class, Abohar, is set aside, and the application, filed at the instance of the petitioner invoking Section 311 Cr.P.C., is allowed. However, nothing expressed in the order shall be treated as an expression on the admissibility as well as the evidentiary value of the documents sought to be produced by the petitioner as the same shall be ascertained during trial.

[10] The petition is **disposed off**.

April 18, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No