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

CRM-M-42570-2017 (O&M)
Date of decision: 18.07.2024

Kanwardeep Singh Bhalla

...Petitioner

versus

Jagdeep Kaur Bedi

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Preetinder Singh Ahluwalia, Advocate
 for the petitioner

 Mr. Sandeep Godara, Advocate
 for Mr. Ajay Pal Singh, Advocate
 for the respondent

HARPREET SINGH BRAR, J.(Oral)

1. The present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking setting aside of order dated 24.10.2017 (Annexure P-6) passed by the learned Chief Judicial Magistrate (NRI Cases), Jalandhar whereby application moved by the petitioner under Section 311 Cr.P.C., in complaint dated 17.09.2014 under Sections 406, 498-A, 120-B of the IPC, has been dismissed.

2. Briefly, the facts are that the marriage of the daughter of the petitioner namely Dalbir Kaur and son of respondent namely Gurpreet Singh was solemnized on 06.01.2013 in accordance with Sikh rites and rituals. At the time of the marriage, daughter of the petitioner was a permanent resident



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of Canada, while Gurpreet Singh resided in the United States on an H1-B visa. However, marital discord ensued when Gurpreet Singh and his family began harassing Dalbir Kaur for dowry. Subsequently, the petitioner moved an application under Section 156(3) Cr.P.C., which was ultimately treated as a complaint. After recording of preliminary evidence, Gurpreet Singh and the respondent were summoned to face trial. Pertinently, during the course of the trial, Gurpreet Singh was declared as Proclaimed Offender.

3. An application was moved by the petitioner under Section 311 Cr.P.C. requesting permission to prove documents pertaining to jewellery, hotel bills and photographs depicting entrustment of jewellery. The said application was dismissed vide order dated 10.03.2017 (Annexure P-3) passed by the learned trial Court, stating that only the author of the bills can prove them. Thereafter, charges were framed which was followed by moving a fresh application under Section 311 Cr.P.C. dated 17.10.2017 (Annexure P-4) to prove the author of the said bills. However, the same was dismissed vide impugned order dated 24.10.2017 (Annexure P-6).

4. Learned counsel for the petitioner *inter alia* submits that the learned Court below has fallen into grave error by dismissing the application moved by the petitioner under Section 311 Cr.P.C. seeking examination of witnesses in order to prove bills, invoices and photographs relevant to the proper adjudication of the case. The learned Court below cited the order dated 10.03.2017 (Annexure P-3), whereby the application to prove the said documents (bills, invoices, photographs) was dismissed on the ground that



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only the author could prove the contents of the documents, to hold that since the application was dismissed and not challenged, the application dated 17.10.2017 (Annexure P-4) cannot be moved again. Learned counsel submits that distinct and separate prayers were made in the said applications and result of one should not impact that of the second. Further, the first application was moved at the pre-charge stage while the second was moved after framing of the charges, which attracts a different threshold to be met by the way of evidence. Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Varsha Garg vs. State of Madhya Pradesh and others 2022 SCC Online SC 986***, ***State vs. N. Seenivasagan (2021) 14 SCC 1*** and ***Rajaram Prasad Yadav vs. State of Bihar and another (2013) 14 SCC 461*** to strengthen his arguments.

5. Learned counsel for the respondent submits that the learned trial Court has passed the impugned order based on correct appreciation of facts and evidence. As such, interference by this Court is not warranted.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, this Court is of the considered opinion that allowing the petitioner to prove the said bills and photographs would not cause any prejudice to the respondent, rather the same would be essential to just adjudication of the case as entrustment is key to proving the offence defined under Section 405 IPC. The failure on the part of the prosecution to produce the said bills and photographs at an earlier point in time should not be allowed to inhibit the cause of justice and the quest for truth. Further, the



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delay in filing the said application also stands reasonably explained as possibilities of amicable settlement were being explored, which is not a rarity in cases arising from matrimonial disputes.

7. A two judge Bench of the Hon'ble Supreme Court in **V. N. Patil vs. K. Niranjana** 2021(2) R.C.R.(Criminal) 310, examined the scope of the power under Section 311 of Cr.P.C and speaking through Justice Ajay Rastogi, the 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



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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.

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 an 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



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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".

8. Accordingly, the present petition is allowed and the impuged order dated 24.10.2017 (Annexure P-6) passed by the learned Chief Judicial Magistrate (NRI Cases), Jalandhar is set aside. Consequently, the trial Court is directed to grant two effective opportunities to the petitioner to examine the witnesses as mentioned in his application under Section 311 Cr.P.C.

9. Pending miscellaneous application(s), if any, shall also stand disposed of.

18.07.2024

Ajay Goswami

**(HARPREET SINGH BRAR)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No