

CRM-M-28247-2024

[1]

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

CRM-M-28247-2024

Date of decision: 11.07.2024

Jaswant Singh

...Petitioner

Versus

Gurmeet Singh and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Madan Sandhu, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. seeking setting aside of order dated 02.05.2024 passed by the Court of Judicial Magistrate Ist Class, Kharar, District SAS Nagar whereby the application filed by the petitioner/ accused under Section 311 Cr.P.C. was dismissed in a Crl. Comp. No. NACT-33/2017 titled Gurmeet Singh Vs. Jaswant Singh, under Section 138 of Negotiable Instruments Act (for brevity, NI Act).

2. The brief facts of the case are that respondent No.1 Gurmeet Singh filed aforesaid criminal complaint against the present petitioner wherein on completion of preliminary evidence, petitioner was summoned as an accused to face trial under Section 138 NI Act. The petitioner did not plead guilty to the notice of accusation served upon him. Thereafter complainant was examined as CW.1 and on conclusion of the evidence on behalf of the complainant, the statement of petitioner under Section 313

Cr.P.C. was recorded and the case was fixed for defence evidence at which stage petitioner filed an application under Section 311 Cr.P.C. (Annexure P-4) for recalling CW.1 complainant Gurmeet Singh for further cross-examination. The said application was contested by the complainant and was dismissed by the trial Court vide order dated 02.05.2024. Being aggrieved the petitioner has filed the present petition.

3. The counsel for the petitioner submits that one FIR No.96 dated 27.12.2018 (Annexure P-2) was also registered against petitioner and some other persons at the instance of complainant/respondent No.1, which also covered transaction in dispute and on completion of investigation, police presented challan in the said criminal case in year 2022. It is further submitted that after going through copy of the said challan, petitioner came to know certain new facts which he had not put to complainant/respondent No.1, when the complainant was cross-examined as CW-1 in year 2019 by him. It is further submitted that the reason for the said omission is that in 2019 when complainant was cross-examined, certain new facts which were recorded by the police in aforesaid challan, were not in knowledge of the petitioner. The counsel for the petitioner further submits that the interest of justice demands that petitioner be given one opportunity to further cross-examine the complainant with regard to aforesaid new facts which came into knowledge of the petitioner after the filing of the report under Section 173 (3) Cr.P.C. by the police.

4. I have considered the submissions made by counsel for the petitioner.

5. The scope and object of the provision of Section 311 Cr.P.C. is

to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts to arrive at a just decision of the case. The power is to be exercised judiciously and not arbitrarily. Such a power is to be exercised, provided that the evidence that is likely to be adduced by the concerned witness is relevant to the issue involved. The Hon'ble Apex Court in case of *Manju Devi Vs. State of Rajasthan (2019) 6 SCC 203* had observed that an application under Section 311 Cr.P.C could not be rejected on the sole ground that the case has been pending since long.

6. In the instant case, it appears that complainant appeared in the witness box as CW-1 and his cross-examination was completed on 21.11.2019. However, admittedly by that time challan in criminal case having FIR No.96 dated 27.12.2018 was not filed by the police and the same appears to be presented in the Court concerned in year 2022. It is the case of the petitioner that certain new facts having bearing on the present case, surfaced in the said report submitted by the police under Section 173 Cr.P.C and it is necessary to put the said new facts to the complainant in his cross examination. In the given circumstances, having regard to the scope of Section 311 Cr.P.C, the application filed by the petitioner ought to have been allowed, as the said provision of law provides that any Court may at any stage of any enquiry, trial or other proceedings under the Cr.P.C. summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and reexamine any person already examined, in case it appears to the Court that evidence of such person who is sought to be recalled is essential to the just decision of the case.

7. In light of the above discussion, the present petition is allowed and impugned order dated 02.05.2024 passed by the trial Court is set aside and the application filed by the petitioner under Section 311 Cr.P.C. is allowed subject to cost of Rs.5,000/- to be deposited by the petitioner with the District Legal Services Authority concerned. The trial Court is directed to grant one effective opportunity to the petitioner to further cross-examine the complainant with regard to new facts which have appeared in police challan and are having bearing on the present case. Any observation made herein above is not to be construed as an expression of opinion on the merits of the case.

8. Keeping in view the nature of order being passed, no notice is required to be issued to the respondent No.1. However, if he feels dis-satisfied with this order, he may move an application to recall the same.

11.07.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No