



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

CRM-M-29422-2023

Date of Decision: 03.12.2024

M/S DOVE APPAREL PVT LTD AND OTHERS

.....PETITIONERS

VERSUS

KULDEEP KUMAR JAIN

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Manish Jain, Advocate and
Mr. Siddhant Jain, Advocate for the petitioners.

Mr. Om Pal Sharma, Advocate for
Mr. Harpal Singh Parmar, Advocate for the Respondent.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 482 Cr.P.C. for quashing of order dated 21.04.2023 (Annexure P-1) passed by JMIC, Ludhiana in complaint dated 17.01.2019 bearing COMA No. 976-2019 titled as “Kuldeep Kumar Jain vs M/S Dove Apparel Pvt Ltd whereby the application filed by the respondent u/s 311 Cr.P.C was allowed.

2. Factual matrix of the case unfolds that the respondent filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 against the petitioner through his GPA namely Manoj Kumar, alleging that that the cheques issued by the Petitioner for the discharge of its legal liability were dishonoured. Further, at the stage of evidence, Manoj Kumar Jain was cross examined firstly on 22.11.2021 wherein he admitted that Respondent-Kuldeep Kumar Jain is the Father and proprietor of “M/s Adishwar Yarns” but the cross



was deferred for want of documents. Thereafter, Manoj Kumar Jain was further cross examined on 18.08.2022 wherein he admitted that the complaint has been filed in regard to the dealings between M/s Adishwar Yarns and M/s Dove Apparel Pvt Ltd.

3. The counsel for the petitioners at the very outset contends that only to fill the lacuna in his case, the complainant-respondent filed an application u/s 311 Cr.P.C for tendering revised and rectified GPA dated 09.11.2022(Annexure P-7) in favour of Manoj Kumar Jain.

4. He further contends that the GPA in question was exhibited with the complainant dated 17.01.2019 and the application to file the rectified GPA was made on 09.11.2022 meaning thereby, the GPA holder was never authorized to file and pursue the complaint in the first place.

5. He vehemently argues that the GPA is always prospective and not retrospective added with the fact that the respondent-complainant by virtue of section 311 Cr.P.C is trying to bring on record a fresh document with retrospective effect.

6. Per contra, counsel for the respondent submits that since the respondent-complainant was proprietor of M/s Jinesh Yarn but later, the name of the firm stands changed to M/s Adishwar Yarn and it is only due to typographical error, the name of the proprietorship is mentioned as Jinesh Yarn in the power of attorney which the respondent-complainant wish to get it rectified.

7. Heard learned counsel for the respective parties at length.

8. The present revision pertains to grievance of the petitioner against the impugned order dated 21.04.2023 passed by the trial court allowing the application under section 311 Cr.P.C wherein the respondent-complainant was



allowed to place on record rectified copy of the GPA.

9. Before delving into the merits of the case, it would be apposite to discuss section 311 Cr.P.C which is reproduced herein below:-

Section 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.

10. Perusal of the facts in hand makes it amply clear that section 311 Cr.P.C. only allows recalling and re-examination of a witness already examined wherein in the present case, the examination of respondent-complainant is also pending and not yet closed.

11. Further, the Apex Court in “***Vijay Kumar vs State of U.P. & Anr, 2011 (8) SCC 136***” has held that :-

“though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the code and the principles of criminal law. The discretionary power conferred under section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”

12. An application under section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party . What is required to be seen is the essentiality of the evidence sought to be brought on record. In

the instant case, the GPA holder of respondent-complainant Manoj Kumar Jain was cross examined on two dates i.e 22.11.2021 and 18.08.2022 wherein not even once he took the plea of rectification of the GPA pertaining to typographical error. Moreso, admittedly the GPA was exhibited with the complaint and it is only when a question to this effect was put to the GPA holder, an application under section 311 Cr.P.C. was moved which is suffice for this court to cast doubt on the prosecution story.

13. Therefore, going by the essentiality test, it can be clearly seen that the document referred to in the application under section 311 Cr.P.C. is only an after thought to fill the lacuna in the prosecution story which the court does not deem fit to allow.

14. Taking into consideration the above stated facts, I find considerable merit in the present petition and therefore, the same is allowed and the order passed by JMIC, Ludhiana dated 21.04.2023 (Annexure P-1) is hereby quashed qua the petitioner.

15. It is made clear that the Trial court shall proceed with the trial in accordance with the law and conclude the same as expeditiously as possible.

16. Accordingly ordered.

03.12.2024
Meenu

(SANDEEP MOUDGIL)
JUDGE

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