

(208) IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRM-M-34026-2022

Date of decision : 18.03.2024

RAJU KUMAR KASHYAP

... Petitioner

Versus

HARPREET KAUR

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Atul Goyal, Advocate  
for the petitioner.

Mr. A.S. Jawandha, Advocate  
for the respondent.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 12.05.2022 (Annexure P-6) whereby the application under Section 311 Cr.P.C. has been declined in complaint titled as 'Raju Kumar Kashyap Versus Harpreet Kaur' under Section 138 of the NI Act, 1881 bearing No.COMA-7140-2014 dated 10.10.2014 pending in the Court of JMIC, Ludhiana.

2. The brief facts of the case are that the respondent/accused was the owner in possession of a property situated at Ludhiana executed an agreement to sell dated 03.04.2014 for the said property for a total consideration of Rs.20 lakhs in favour of the petitioner/complainant. A sum of Rs.10 lakhs was paid at the time of the agreement and Rs.2 lakhs thereafter. The copy of the agreement to sell dated 03.04.2014 is attached as Annexure P-1 to the petition.

3. As the respondent/accused could not execute the sale deed, a compromise took place and the respondent/accused agreed to return

the amount of Rs.12 lakhs paid to her by the petitioner/complainant. In furtherance of the same, a cheque bearing No.000002 dated 22.08.2014 amounting to Rs.12 lakhs was issued to the petitioner/complainant which on presentation came to be dishonoured.

4. A complaint was filed by the petitioner/complainant on 30.09.2014/10.10.2014 under Section 138 NI Act. A copy of the complaint is attached as Annexure P-2 to the petition.

5. The petitioner/complainant was examined as CW-1 and also cross-examined. The copy of the evidence is attached as Annexure P-3 to the petition.

6. Based on the aforementioned complaint, the respondent/accused came to be summoned to face Trial vide order dated 10.10.2014.

7. During the course of the proceedings, an application under Section 311 Cr.P.C. was moved by the petitioner/complainant to bring on record the agreement to sell dated 03.04.2014 (Annexure P-1) and sale deed bearing Vasika No.10560 dated 03.02.2014 in favour of the respondent/accused by way of additional evidence under Section 311 Cr.P.C. The copy of the said application dated 17.03.2020 is attached as Annexure P-4 to the petition. A reply was filed to the same dated 30.07.2021. A copy of the said reply is attached as Annexure P-5 to the petition.

8. Vide order dated 12.05.2022, the Trial Court proceeded to dismiss the application of the petitioner/complainant on the ground that it had been moved at a belated stage to fill up the lacuna. The copy of the

said order dated 12.05.2022 impugned in the present petition is attached as Annexure P-6.

9. The learned counsel for the petitioner contends that during the course of recording of the evidence of the petitioner/complainant, the agreement to sell dated 03.04.2014 had been clearly adverted to and the respondent/accused had even cross-examined the petitioner/complainant on the said agreement to sell. However, inadvertently, on account of an oversight, the said agreement could not be placed on record at that time. Further, the sale deed in favour of the respondent/accused dated 03.02.2014 on the basis of which the agreement to sale dated 03.04.2014 was entered into was also required to be brought on record so as to establish the offence in question. The said sale deed was even otherwise, a matter of record. The bringing on record none of these documents would not cause any prejudice to the rights of the respondent/accused who would cross-examine the witnesses as to the documents sought to be brought on record. Delay in moving an application under Section 311 Cr.P.C. or a lacuna being sought to be filled up were of little relevance in view of the essential nature of the evidence sought to be brought on record. Therefore, the impugned order was liable to be quashed and the said documents were required to be brought on record by way of the application under Section 311 Cr.P.C. Reliance is placed on the judgment of the Hon'ble Supreme Court in the case of V.N. Patil Versus K. Niranjana Kumar & others, Criminal Appeal No(s).267 of 2021, decided on 04.03.2021.

10. On the other hand, the learned counsel for the respondent while referring to the reply dated 28.02.2023 contends that the

agreement to sell was well within the knowledge of the petitioner/complainant but had not been brought on record and at this belated stage, he could not be permitted to fill up the lacuna on the basis of forged and documents which had never been executed between the petitioner/complainant and the respondent/accused. In fact, the petitioner/complainant had concealed the factum of receiving stolen documents i.e. the sale deed from the husband of the respondent/accused. He, therefore, contends that the present petition was liable to be dismissed.

11. I have heard the learned counsel for the parties.

12. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 311 Cr.P.C.

Section 311 Cr.P.C, reads ad under:-

*““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.””*

13. The Hon'ble Supreme Court in the case of **V.N. Patil Versus K. Niranjana Kumar & others, Criminal Appeal No(s).267 of 2021, decided on 04.03.2021**, 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.”*

[emphasis supplied]

14. Coming back to the facts of the instant case, it is apparent that as per the case of the petitioner/complainant, a cheque for an amount of Rs.12 lakhs had been issued by the respondent/accused as the agreement to sell dated 03.04.2014 (Annexure P-1) could not be executed due to the inability of the respondent/accused. Therefore, once the said agreement was the very basis of the issuance of the cheque, its subsequent dishonouring and consequential complaint and summoning order, it was certainly essential to be brought on record for the just adjudication of the case. As regards the sale deed bearing Vasika No.10560 dated 03.02.2014, it may be pertinent to mention here that it is the said sale deed by which the accused/respondent came to be the owner of the property pursuant to which the agreement to sell dated 03.04.2014 (Annexure P-1) came to be executed by the said accused/respondent in favour of the petitioner/complainant. Therefore, clearly, it is a document which is a matter of record. It is probably on account of an oversight that the said document also was not brought on record at the relevant time. Even otherwise, even if it is taken to be correct that the application under Section 311 Cr.P.C. had been moved at

a belated stage to fill up a lacuna, the said issues would remain subservient to the larger issue of the essentiality of the evidence sought to be brought on record by way of the application under Section 311 Cr.P.C. In the opinion of this Court, the agreement to sell dated 03.04.2014 (Annexure P-1) and the sale deed bearing Vasika No.10560 dated 03.02.2014 are certainly required to be brought on record for the just adjudication of the present case.

15. In view of the above, this Court finds considerable merit in the present petition and therefore, the impugned order dated 12.05.2022 (Annexure P-6) passed by the Judicial Magistrate, 1<sup>st</sup> Class, Ludhiana stands quashed. The petitioner/complainant is permitted to tender and exhibit copies of the agreement to sell dated 03.04.2014 (Annexure P-1) and the sale deed bearing Vasika No.10560 dated 03.02.2014 by way of additional evidence in terms of the application dated 17.03.2020 (Annexure P-4).

16. Pursuant to the exhibiting of the documents in question, the Trial Court is directed to conclude the Trial not later than 03 months thereafter.

**(JASJIT SINGH BEDI)**  
**JUDGE**

**18.03.2024**  
JITESH

**Whether speaking/reasoned:- Yes/No**

**Whether reportable:- Yes/No**