



CRM-M-31460-2024

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**283 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-31460-2024

Date of decision: 24th July, 2024

Gursewak Singh Cheema

...Petitioner(s)

Versus

Satnam Singh

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Abhinav Jain, Advocate for the petitioner.
Mr. Ashish Gupta, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The challenge in this petition is to the order dated 08.05.2024 as passed by the Judicial Magistrate Ist Class, Moga in criminal complaint bearing CIS No. NACT/182/2019 titled as '*Gursewak Singh Cheema Vs. Satnam Singh*', whereby an application filed by the petitioner under Section 311 Cr.P.C. had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner has filed the aforementioned complaint before the learned trial Magistrate under Section 138 of Negotiable Instruments Act, 1881 (for short 'the Act 1881') as Manager of M/s Cheema Traders. During the pendency of this complaint, he filed an application for granting him permission to produce and tender in evidence, a general power of attorney dated 03.03.2004 claimed to have been executed by Ms. Kulwinder Kaur who is his wife and proprietor of M/s Cheema Traders, as well as authority letter dated 18.03.2024 as issued by her in favour of the



petitioner. It was submitted that these documents were necessary for just decision of the case and no prejudice was going to be caused to the respondent, if they were allowed to be tendered in evidence.

3. The respondent is shown to have contested the above mentioned application and vide order dated 08.05.2024, the learned Magistrate dismissed the same by observing that the application had been filed by the petitioner to fill up lacuna in his case. Feeling aggrieved, the instant petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned Magistrate did not appreciate the peculiar facts of the case in proper perspective. The learned Magistrate gravely erred in considering the fact that even in the licence issued by the Market committee, Dharamkot in favour of M/s Cheema, the name of the petitioner being general power of attorney holder of proprietor, was shown as Manager. It is also submitted that the general power of attorney dated 11.03.2004 was lost and could not be produced by the petitioner earlier and that is why, he wanted to produce it by way of additional evidence at this stage. It is also argued that the authority letter dated 18.03.2024 issued by the proprietor of the firm in favour of the petitioner, who is none other than her husband, was to avoid any adverse order to be passed against the petitioner who is infact managing the affairs of the firm M/s Cheema. While concluding learned counsel has submitted that the proposed evidence if allowed, was not going to prejudice to the respondent as he would be getting opportunity to rebut or controvert



the same by producing evidence. Therefore, it is urged that the impugned order be set aside, the petition be accepted and the petitioner be permitted to produce the proposed documents by way of additional evidence.

5. *Per contra*, learned counsel for the respondent has vehemently argued that the impugned order does not warrant any interference as the same is well reasoned. The petitioner without having any authority or competence to file the complaint against the respondent, prosecuted the same so far and had moved application at the fag end of the trial, which is at the stage of producing defence evidence clearly with an intention to fill up lacuna in his case. In his statement recorded under Section 313 of Cr.P.C., the respondent had taken a specific defence that the complaint has not been filed by duly authorized/competent person and the application under Section 311 of Cr.P.C. had been filed only thereafter. It is submitted that no party should be allowed to fill up lacuna in its case to the prejudice of the other party and therefore, it is urged that the petition is liable to be dismissed.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. Before delving into the merits of the application, it is relevant to mention that undoubtedly Section 311 of Cr.P.C. confers vast discretion upon the Court but such discretion has to be exercised judicially and not arbitrarily or capriciously. The power under this Section has to be exercised by this Court to meet the ends of justice and for valid reasons. It should not be exercised, if the Court is of the view that the application has been filed as an abuse of process of law. The Court can certainly allow any document to



be produced on record by exercising powers under these Sections if such document/evidence is relevant for just decision of the case. Admittedly and evidently, it is the wife of the petitioner who is proprietor of M/s Cheema Trader. The petitioner has claimed that he has been looking after the affairs of M/s Cheema Trader in the capacity of Manager and also as a general power of attorney holder of the proprietor. He sought permission of the trial Court to produce on record general power of attorney dated 03.03.2004 executed by the proprietor Ms. Kulwinder Kaur in his favour and an authorization letter dated 18.03.2024 executed by Ms. Kulwinder Kaur thereby authorizing the petitioner to file and pursue the complaint under the Act, 1881. The complaint in this case has been filed by the petitioner as Manager of M/s Cheema Traders which is a sole proprietorship concern of his wife namely Ms. Kulwinder Kaur. At this stage, the petitioner wants to place on record a general power of attorney executed by his wife in his favour as way back in the year 2004 as well as an authorization letter dated 18.03.2024. In my opinion, proposed documents are certainly required to be produced in evidence for just decision of the case and it is totally immaterial as to whether, such requirement would lead to filling up the alleged lacuna left in the case. No doubt, the interest of the respondent-accused is also to be seen, however, merely by producing these documents in evidence, no prejudice appears to have been caused to the respondent more particularly when he would be getting opportunity to controvert the authenticity of the proposed documents. For this purpose, the Court is not required to see whether the complainant was competent to file the complaint or not. In



‘Zahira Habibullah H. Sheikh and another Vs. State of Gujarat and others 2004(2) RCR (crl.) 836, the Hon’ble Supreme Court while dealing with the objection that the application under Section 311 of Cr.P.C., if allowed would lead to filling in the lacuna of the prosecution case, observed that the resultant filling of loopholes on account of allowing an application under Section 311 of Cr.P.C. is merely a subsidiary factor and the Court’s determination of the application should only be based upon the essentiality of the evidence. It is the duty of a criminal Court to allow prosecution/complainant to correct an error in the interest of justice. In view of the discussion as made above, I am of the considered opinion that it would not be an improper exercise of the powers of the Court to allow the petitioner to produce the proposed documents i.e. power of attorney and authorization letter executed by the sole proprietor of M/s Cheema in evidence as their production as such is essential to the just decision of the case. Accordingly, the petition is allowed and the impugned order is set aside. The learned trial Magistrate shall allow the petitioner to produce the proposed documents in evidence by granting maximum two opportunities for this purpose.

9. A copy of this order be sent to the trial Court.

[MANISHA BATRA]
JUDGE

24th July, 2024

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No