

2024:PHHC:146298



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

**CRM-M- 33856-2024
DECIDED ON: 23.07.2024**

**M/s Atwal Sunder Marketing Pvt. Ltd. And Ors.
.....PETITIONERS**

VERSUS

**M/s Gaurav Electronics
.....RESPONDENT**

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Shivam Grover, Advocate
for the petitioners.

Mr. Maninder Arora, Advocate
for the respondent.

SANDEEP MOUDGIL, J

1. The jurisdiction of this court under section 482 of the code has been sought seeking the quashing of the impugned order dated 15.05.2024 passed by learned Judicial Magistrate Ist Class, Ludhiana vide which the application filed by the complainant under Section 311 Cr.P.C. has been allowed.

2. Shorn of unnecessary details the fact leading to filing of present petition is that the complaint under Section 138 of Negotiable Instruments Act, 1881, was preferred by the complainant on 21.04.2021 alleging that an amount of Rs 1,12,13,200 was due towards the petitioner on account of supply of electronics for which he issued cheque in question and notice of accusation was served upon to the petitioner wherein the

petitioner denied any amount due towards the complainant and rather took a stand that the cheques were security cheques which have been misused by the complainant. And the complainant moved an application under section 311 of the code to lead some additional evidence when case was still at the stage of complainant evidence.

3. Learned counsel for the petitioner contends that the Judicial Magistrate First Class (JMFC), Ludhiana, committed an error by allowing the complainant/respondent's application under Section 311 of the Code through an order dated May 15, 2024 (Annexure P/1). Although the JMFC acknowledged the petitioners' objections, he failed to provide findings or address various grounds raised by the petitioners in their opposition to the Section 311 of the code application.

4. He further submits that review of the application dated March 13, 2024 (Annexure P/6) reveals that the complainant/respondent is attempting to evade the damaging implications of their cross-examination, during which they failed to produce copies of bills and e-way bills despite numerous opportunities. The petitioners had explicitly warned that the complainant/respondent might attempt to fabricate or forge evidence in the future, and unfortunately, this apprehension has now materialized. Moreover, it is significant to note that the complainant/respondent cannot claim that they were unaware of the evidence or witness in question prior to their cross-examination and the witness the complainant is now intended to examine was not mentioned in list of witnesses.

5. Per contra learned counsel for the respondent submits that for the just adjudication of the case, examination of the GST record keeper is very much essential in order to prove the liability of the petitioner to pay the balance price of the goods purchased and by no stretch of imagination this

would hamper the case of the accused rather would held in arriving at a just decision .

4. Heard arguments of learned counsel for the respective parties
5. The following principles will have to be borne in mind while dealing with an application under Section 311 Criminal Criminal Procedure Procedure Code read along with read along with Section Section 138 of the of the Evidence Act.”

(i) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

(ii) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

(iii) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person. (iv) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

(v) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice. (vi) The wide discretionary power should be exercised judiciously and not arbitrarily.

(vii) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

(viii) *The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*

(ix) *The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*

(x) *Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.*

(xi) *The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.*

(xii) *The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.*

(xiii) *The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.*

(xiv) *The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant*

of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

6. It is a well settled law that an application under Section 311 of the Code must not be allowed only to fill lacuna in the case of prosecution, or the defense or to disadvantage of the accused or to cause serious prejudice to the defense of the accused or to give an unfair advantage to the opposite party. Additional evidence must not be received as a disguise for retrial or to change the nature of the case against the parties.

7. In case of **V.N. Patil vs. K. Niranjan Kumar and Ors., (2021) 3 SCC 661**, the aim of every court is to discover the truth. Section 311 of the Code is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

8. Dependence can be relied on in the case of **Zahira Habibullah Sheikh and Ors. v. State of Gujarat and Ors., (2006) 3 SCC 374**, wherein Apex Court observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. From above it can be safely said that it is the duty of court to ensure that such fairness is not hampered or threatened in any manner. It is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. It is cardinal rule in the law of evidence that the best available evidence should be brought before the court to prove a fact and points on

issue. But it is left either for the prosecution or for the defense to establish its respective cases by adding the best available evidence and the court is empowered under the provision of the code to compel either the prosecution witness on their sides. Where a person is essentially a witness for the prosecution and the prosecution should have cited him either the charge sheeted or immediately afterwards but failed to do so, the failure of the prosecution to call him as a witness cannot be made up by the court, exercising its power under this Section.

9. A witness even if not summoned but present in Court, can be examined in the interest of justice Rules of procedure are meant to do substantial justice and not to throttle the same. Courts are required to give fair chance to the parties to lead their evidence and not to decline to examine the witness unless the witness is unnecessary or his examination would amount to abuse of the process of Court or some such other substantial reason is there. Not giving the name of the witness in the list of witnesses by itself is not a sufficient ground to decline to examine the witness. It is in case of mala fides or an attempt to abuse the process of the Court or to delay the proceedings, or such other reasons that the Court may refuse to examine a witness. And in present case there is no averment of this nature on the record which would suggest that complainant want to delay the trial.

10. Keeping in view the object of Section 311 of the Code, the examination of material witness, which is required to be conducted by the prosecution can be allowed at any of the stage of the case. This court is of the considered view that the witness the complainant is intended to examine is a crucial witness as the whole case would rest on that therefore I find no occasion to interfere in the well reasoned order of the trial Court, which is

required for the just adjudication of the case, as it would not cause any prejudice to either of the parties and rather the petitioner/accused would have the opportunity to rebut the same.

11. In view of the discussions made hereinabove, this Court is of the view that there is no illegality, perversity or infirmity in the impugned order dated 15.05.2024 (Annexure P-1).Hence, the same is upheld and the present petition stands dismissed.

23.07.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
Whether reportable	Yes/No