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

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Date of Decision: 23.09.2024

M/S OYSTER CONSTRO CARE PVT. LTD AND ANR**.....Petitioners**

Versus

YFC PROJECTS PVT. LTD AND ANR**.....Respondents****CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.**

Present: Mr. Shailendra Kashyap, Advocate with
Mr. Sumit Sharma, Advocate for the petitioners.

GURBIR SINGH, J (ORAL)

1. This petition has been moved for setting aside the order dated 05.01.2023 passed by learned Judicial Magistrate Ist Class, Gurugram, whereby application filed by the complainant /respondent under section 311 Cr.P.C was allowed and order dated 06.06.2024 passed by learned Addl. Sessions Judge, Gurugram whereby revision filed against the above said order was dismissed.

2. The brief facts which are necessary for the disposal of the instant petition are that the respondent/complainant filed a complaint under Section 138 of the Negotiable Instruments Act. The respondent/complainant moved an application under Section 311 Cr.P.C for leading additional evidence and summoning the Accountant/ Record Clerk of the complainant-

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Company, who was incharge of the record pertaining bills, invoices, statement of account etc and necessary to prove the case of the complainant. The learned trial Court, keeping in view that the provision of Section 311 Cr.P.C gives ample power to the Magistrate to examine any witness in the trial, the petitioner took the defense that no material was supplied to the petitioner, examination of accountant/ record clerk is necessary, so allowed the application. The petitioner/ accused filed the revision against the said order which was dismissed.

3. Learned counsel for the petitioner has argued that at the pre-summoning stage, the complainant had annexed only the authorization letter, cheques, legal notice, memo issued in respect of dishonored cheques and the postal receipts. The authorized representative of the complainant/respondent was examined and he was unable to prove the facts stated in the complaint. The complainant exhibited documents at the pre-summoning stage and also at the post-summoning stage and close the evidence. The cheques as mentioned in the complaint were not issued qua the liability as the CW-1 grossly failed to prove the case against the petitioner. The respondent/complainant cannot fulfill the lacuna occurred during the cross-examination by producing another witness and other documents which were not part of the complaint at the pre-summoning stage. He further submits that no additional evidence/document can be produced under Section 138 of the Negotiable Instruments Act. He has placed reliance on ***“Yahoo! India Private Limited Versus State & Anr. Crl.M.C.No. 205/2012 & Crl.M.A.No.771/2012 (stay) decided on***

02.03.2012”



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4. I have heard the submissions made by the learned counsel for the party and have gone through the record.

5. Section 311 Cr.P.C is as under:

“ 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.”

6. The provisions of Section 311 Cr.P.C can be exercised at any stage of any enquiry, trial or other proceedings. Any material witness can be summoned and examined under this Section even if case is being tried as a summons case. At the stage of issuing the summons, while the Court takes cognizance, the Court should be of the view that there is a sufficient ground for proceeding against the accused. In case of ***Manju Devi Vs. State of Rajasthan (2019) 6 SCC 203***, the Hon’ble Supreme Court emphasized that a discretionary power like Section 311 Cr.P.C is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. In case of ***Harendra Rai Vs. State of Bihar, 2023 SCC Online SC 1023***, a 3-Judge Bench of Hon’ble Supreme Court was of the opinion that Section 311 Cr.P.C should be invoked when ‘...it is essential for the just decision of the case.’ The Hon’ble Supreme Court in the case of ***Rajaram Prasad Yadav Vs. State of Bihar and Anr: 2013 AIR Supreme Court 3081*** laid on the principles which are to be borne in mind by the Courts while dealing with



an application under Section 311 Cr.P.C. The para-23 of the judgment is as under:-

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) 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?
- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. 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.
- c) 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.
- d) The exercise of power under Section 311 Cr.P.C. 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.
- e) 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.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) 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.



- h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) 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.
- j) 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.
- k) 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.
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
- m) 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.
- n) The power under Section 311 Cr.P.C. 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



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persons concerned, must be ensured being a constitutional goal, as well as a human right.

7. The authority *Yahoo! India Private Limited Versus State (Supra)* is not attracted at all to the facts of the present case. The dispute in the case in hand is to prove that the cheque was issued for lawful liability and complainant wants to bring invoices, documents etc by examining its concerned Clerk so examining of said witness is necessary for just decision of the case.

8. In view of above, I do not find any illegality and irregularity in the order passed by learned Court below. This revision petition is without merit and is dismissed accordingly.

23.09.2024

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(GURBIR SINGH)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No