



CRR-2093-2024

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

CRR-2093-2024

Date of Decision: 24.10.2024

M/s Mukesh Steels Ltd.

..... Petitioner

Versus

Atma Ram Mela Ram Steels Pvt. Ltd. and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vivek Aggarwal, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. The petitioner has approached this Court impugning the order dated 06.09.2024 passed by learned JMIC, Ludhiana, vide which evidence of the petitioner-complainant has been closed by order.

2. It has been submitted by learned counsel for the petitioner that the petitioner before this Court is the complainant, who had examined CW-2 Umesh Arora, however, inadvertently the said witness could not be cross-examined. He submits that the petitioner filed an application under Section 311 Cr.P.C. for cross-examination of CW-2 Umesh Kumar before the trial Court and the same was allowed subject to costs of Rs.1,000/-, however, due to transfer of Umesh Kumar, he could not be cross-examined. He further submits that thereafter, the petitioner filed another application under Section 311 Cr.P.C. for examination of Manager of SBI, Millar Ganj, Ludhiana alongwith the record, however, the same has been dismissed by learned trial Court vide impugned order dated 06.09.2024. He thus submits that the summoning of the said witness is necessary for the just decision of the case.

He submits that learned trial Court has miserably failed to appreciate the



application filed on the anvil of the law settled and thus, has illegally dismissed the same on the hyper-technical grounds. He submits that application under Section 311 Cr.P.C. is maintainable at any stage before the conclusion of the trial. It is submitted that the impugned order being illegal, unjust and improper deserves to be set aside and the petitioner be granted one effective opportunity to produce the said witness.

3. Heard.

4. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner before this Court is the complainant, who filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 before learned JMIC, Ludhiana. Though the application filed by the petitioner under Section 311 Cr.P.C. for cross-examining CW-2 Umesh Kumar was allowed by the trial Court subject to payment of Rs.1,000/-, however, the witness could be cross-examined for the reason that he was transferred and his transfer was beyond the control of petitioner or said Umesh Kumar. Now the petitioner filed another application under Section 311 Cr.P.C. for examining the Manager of SBI, Millar Ganj, Ludhiana alongwith the record.

5. There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For resolving the controversy, appreciation of provisions of Section 311 Cr.P.C. are relevant, which read as under:-

“311. Power to summon material witnesses, 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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.”

6. From the bare reading of the provisions of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential for the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328** held as under:-

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

7. Hon'ble Supreme Court time and again has held that the power granted under Section 311 Cr.P.C. should be exercised in a liberal manner, if the Court finds that evidence of the witness sought to be examined is essential for just decision of the case.

8. Keeping in view the settled proposition of law, the Court is of the opinion that the Court should invoke its power under Section 311 Cr.P.C. for meeting the ends of justice as the witness sought to be examined is necessary for the just decision of the case. Thus, the impugned order dated



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06.09.2024 is set aside subject to costs of Rs.10,000/- to be paid by the petitioner to the accused, respondent No.2, which shall be deposited with the trial Court and shall be paid to the accused forthwith on his appearance. The petitioner be granted one effective opportunity to produce/examine the witness as sought to be produced by him and before starting examination of said witness, the costs shall be paid to the respondent/accused.

9. The present petition is disposed of in above-said terms.

(RAJESH BHARDWAJ)
JUDGE

24.10.2024
sharmila

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No