



CRR-2059-2024

-1-

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

CRR-2059-2024

Date of Decision: 21.10.2024

Manoj Kumar

..... Petitioner

Versus

Salinder Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Narinder S. Lucky, Advocate, for the petitioner

Rajesh Bhardwaj, J.

1. The petitioner has approached this Court impugning the order dated 18.09.2024 passed by learned JMIC, Ambala, vide which the application filed by the petitioner under Section 311 Cr.P.C. was dismissed.
2. Learned counsel for the petitioner has submitted 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, Ambala, which is pending adjudication. He has submitted that during the trial, the petitioner filed an application under Section 311 Cr.P.C. for recalling complainant, i.e. himself for re-examination. He has submitted that during the proceedings, the petitioner realized that inadvertently, the account statements/pass book were not tendered at the relevant stage, however, the same are necessary for the just decision of the complaint and hence, for producing the same, he filed an application under Section 311 Cr.P.C. for recalling himself for re-examination. He submits that the account statements/pass book are essential to be produced in evidence as the same are necessary for the just decision of the case. He has submitted that the petitioner had advanced a loan to the respondent after withdrawing the same



from his bank account maintained in Axis Bank, Ambala and State Bank of Patiala (now SBI), Ambala Cantt. He submits that learned trial Court 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 by allowing the application under Section 311 C.P.C. filed by the petitioner.

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, Ambala. As per facts of the case, the petitioner advanced a loan of Rs.6,80,000/- to the respondent-accused on different dates. The respondent issued a cheque which was dishonoured on account of the insufficient funds in the account. The complaint was filed in the year 2017 and thus, it is apparent that after four years, the petitioner has now filed the application under Section 311 Cr.P.C. for his re-examination and producing the account statements/pass book before the trial Court. The petitioner is none other than the complainant, who had filed complaint against the respondent. The record which is sought to be produced by way of filing the present application, was very much in the knowledge of the petitioner and thus, by no stretch of imagination, it can be said that it came into knowledge of the petitioner after four years. The trial under the



Negotiable Instruments Act, 1881, is summary in nature. The petitioner, as evident from the record was granted sufficient opportunities for concluding his evidence and he closed his evidence on 02.08.2023. Filing the application thereafter would definitely show that the petitioner had filed this application now at a belated stage, which would not only delay the trial, but would amount to filling up the lacuna as well. There is no denial to the fact that provisions of section 311 Cr.P.C. can be invoked at any stage before the conclusion of the trial, if the same has been invoked for producing the evidence which is essential for the just decision of the case.

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 to 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. There is no dispute regarding the law settled by Hon’ble Supreme Court time and again 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. However, the same cannot be allowed to be misused for prolonging the trial.

8. From the facts and circumstances of the case, this Court finds no infirmity in the impugned orders passed. The petitioner fails to make out a case, which qualifies on the anvil of the law settled.

9. Resultantly, the present petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

21.10.2024
sharmila

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