



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

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CRM-M-62573-2023

Date of decision: 22.07.2024

M/s A.R. Ventures

.....Petitioner

Versus

M/s Adarsh Furnishers Decorator

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Lakshay Bector, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner-accused is seeking quashing of order dated 03.11.2023 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana in Criminal Complaint No.COMA/14806/2017 dated 07.12.2017 vide which application filed by the petitioner dated 04.05.2023 (Annexure P-1) under Section 311 of the Cr.P.C. for recalling the complainant/CW1 Rajinder Singh for further cross examination, was dismissed.

2. Learned counsel for the petitioner has argued that the learned Trial Court erroneously dismissed his application filed under Section 311 of the Cr.P.C. by failing to appreciate the facts in their correct perspective. It has been further submitted that the respondent-complainant had alleged that the petitioner had issued a cheque for Rs.1 lakh for the purchase of furniture, which was dishonoured due to insufficient funds. While drawing the attention of this Court to Annexure P-3, it has further been contended by the learned counsel that



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the petitioner's former counsel was unduly influenced by the counsel for the complainant and, as a result did not cross examine the witness on crucial facts on 16.01.2023, thereby causing significant prejudice to the rights of the petitioner.

3. It has been further submitted by the learned counsel that, upon suspecting misconduct, the petitioner discovered collusion between his former counsel and the complainant's counsel. Consequently, the petitioner changed his counsel and also lodged a complaint against the former counsel with the Bar Council. The newly engaged counsel then filed an application under Section 311 of the Cr.P.C. to cross examine the complainant specifically pleading that since his previous counsel had failed to address certain critical aspects and had made incorrect suggestions during the cross examination of the complainant, the complainant CW1 Rajinder Singh ought to be recalled for further cross examination.

4. Learned counsel has also asserted that the learned Trial Court, in its impugned order, erroneously dismissed his application without recognizing that the failure to cross examine the complainant on material aspects would severely prejudice the accused-petitioner and lead to miscarriage of justice. Furthermore, it has been submitted that the previous counsel intentionally made incorrect suggestions and, therefore, his application under Section 311 of the Cr.P.C. for recalling of the prosecution witnesses be allowed.

5. I have heard learned counsel for the petitioner and perused the relevant material on record.



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6. Section 311 of the Cr.P.C. empowers the Court to summon or examine any person as a witness at any stage of inquiry, trial, or other proceedings under the Cr.P.C. However, this power must be exercised after due application of judicial mind.

7. In *State of Haryana Vs. Ram Mehar & others : 2000(4) RCR (Criminal) 154*, Hon'ble the Supreme Court held that an application under Section 311 of the Cr.P.C. to recall a prosecution witness for cross examination on the ground that his previous counsel had failed to put certain question(s), cannot be allowed. Hon'ble the Apex Court emphasized that once the accused had himself chosen his counsel, it should generally be presumed that the counsel so selected by a litigant is competent.

8. Adverting to the present case, a perusal of the material on record reveals that the petitioner-accused was summoned on 07.07.2018 and was brought to Court after considerable efforts, including publication notices. The notice of accusation was served, and thereafter the complainant's evidence was recorded on 16.01.2023. It is a matter of record that the petitioner-accused sought multiple adjournments to delay the recording of his statement. Moreover, the complainant (CW1) was extensively cross examined by the previous counsel of the petitioner. The claim of the petitioner that the complainant was not properly examined would be insufficient to invoke the provisions of Section 311 of the Cr.P.C. moreso, when no specific reasons have been detailed in the application.

9. In the application filed under Section 311 of the Cr.P.C.

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before the learned Trial Court, the petitioner failed to specify which aspect or questions were left unaddressed by his previous counsel during the cross examination of CW1. The duty of the Court to provide an opportunity for cross examination has already been fulfilled in this case. Allowing such applications would set a wrong precedent, leading to potential abuse of the legal process in future cases.

10. As a sequel to the above, this Court does not find any merit in the instant petition and the same is accordingly dismissed.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.07.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No