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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-59715-2024 (O&M)
Date of decision: 28.11.2024

Virender Singh @ Virender Singh Raika ...Petitioner

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. H. P. S. Rahi, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 making prayer for setting the order dated 14.11.2024 (Annexure P-6), passed by the Court of learned Judicial Magistrate First Class, Kalka in complaint bearing No. NACT-179-2020, titled as **Rahul vs. Virender Singh**, filed under Section 13 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*) read with Sections 406 and 420 of Indian Penal Code, whereby an application filed by respondent No. 2/complainant under Section 311 of the Code of Criminal Procedure (*for short 'the Code'*) had been allowed.
2. Briefly stated, the relevant facts of the case are that respondent No. 2 has filed aforesaid complaint against the petitioner, wherein the petitioner has been summoned to face trial under Section 138 of the N. I. Act. Respondent No. 2 filed an application under Section 311 of the Code before the learned Magistrate making prayer for allowing him to produce by

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way of additional evidence, copy of the bank statements of the petitioner and his father and also to examine a bank official to prove these statements. Vide impugned order dated 14.11.2024, the said application has been allowed by the learned Magistrate and feeling aggrieved, the instant petition has been filed by the petitioner.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as the learned Magistrate committed a grave error in allowing the application filed by respondent No. 2. The evidence of respondent No. 2 had been closed and this application had been moved thereafter. The proposed additional evidence is not at all necessary for just decision of the case. The case is at the stage of defence evidence. Respondent No. 2 has in a way started *de-novo* trial. Therefore, it is urged that the impugned order is liable to be set aside.

4. I have learned counsel for the petitioner at considerable length and have also perused the material placed on record.

5. It is revealed from the record that respondent No. 2 filed an application under Section 311 of the Code on 25.02.2024 making prayer for producing on record, the copies of bank statements of the petitioner and his father and to prove the said bank statements through concerned bank official. This application has been allowed by the learned Magistrate by observing that the production of proposed additional evidence was necessary for just decision of the case. The learned Magistrate, therefore, gave opportunity to respondent No. 2 to produce the above mentioned documents and get the same proved by examining some official from the bank

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concerned. No doubt, it is also revealed that the case was at the stage of producing defence evidence when this application was moved. However, it has been observed by the learned Magistrate that the proposed additional evidence was required for just decision of the case. Learned counsel for the petitioner has failed to say anything to the contrary. It is well settled proposition of law that the power, under Section 311 of the Code, can be exercised by the Court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the Court to come to a correct finding and for that reason, the Court would be fully justified in permitting production of evidence, whether documentary or oral, where the Court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the Court by the Legislature to exercise the powers under Section 311 of the Code.

6. In ***Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of the Code as under:-

“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither

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to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

7. Reference can also be made to the authority cited as ***Mannan Sk. and others Versus State of West Bengal and another 2014 (13) SCC 59***, wherein Hon'ble Apex Court had allowed the application filed under Section 311 of the Code and the witness was recalled and re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

8. In view of the above position of law, this Court is of the considered opinion that there is no infirmity or illegality in the impugned order. Even otherwise, no prejudice whatsoever is going to be caused to the petitioner because he would be getting opportunity to cross-examine the witness who would be producing the proposed additional evidence and would also be able to produce evidence in rebuttal/defence. Hence, keeping in view the aforesaid facts and circumstances, I find no merit in the present revision. Hence, the same is dismissed.

28.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No