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

CRM-M-60535-2024

Date of Decision: 03.12.2024

AMAR PRAKASH**.....PETITIONER**

VERSUS

POONAM ARORA**.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGI**

Present: Mr. G.C.Shahpuri, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. This petition filed under Section 528 of the Bhartiya Nagrik Suraksha Sanhita, 2023, seeks quashing of the impugned order dated 14.10.2024, Annexure P-6, passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, in case - Complaint No.NIA-1851-2019 titled as "Poonam Arora Vs. Amar Parkash", under Section 138 of the Negotiable Instruments Act, 1881, whereby application of the petitioner under Section 311 Cr.P.C. to summon the complainant/respondent for re-examination has been dismissed, illegally and erroneously.

2. It is contended by the learned counsel for the petitioner that the learned Judicial Magistrate Ist Class, Yamuna Nagar (for short 'trial Court') has erred in dismissing the application of the petitioner as the re-examination of the complainant is very much necessary for the proper adjudication of the matter. The complainant has admitted the execution of an agreement between her and the petitioner/accused on 29.04.2019 and the cheque in



question was given by the accused to the complainant as security cheque but after compromise, the complainant did not return the cheque in question and the petitioner stopped payment of the cheque in question, however, the counsel for the petitioner-accused did not put this fact to the complainant-respondent when she had appeared in the witness box as such the re-examination of the complainant is utmost necessary and for this reason, application under Section 311 Cr.P.C. was filed before the learned trial Court but the same has been dismissed by the learned trial Court without appreciating the urgency and necessity of re-examination of the respondent-complainant. He further argues that the learned trial Court has illegally and erroneously dismissed the application while accepting the plea of the respondent-complainant that the petitioner wants to linger on the proceedings, which is totally false and baseless plea, because the defence evidence is yet to start and the petitioner-accused has a right to prove its innocence. Therefore, the approach of the learned trial Court in dismissing the application is totally unjust and improper and as such the impugned order is liable to be set aside by holding the same to be illegal, unjust and erroneous.

3. Learned counsel for the petitioner, in support of his contentions, has placed reliance on two judgments i.e Himachal Pradesh High Court, passed in Cr.Revision No.313 of 2017 decided on 16.03.2018 titled ***“Sunder Lal Versus Urmila Thakur” reported as 2018(2) ILR (H.P.) 314*** and of Bombay High Court, passed in Crl. Writ Petition No.1086 of 2009 decided on 25.06.2010 titled ***“Vikas Surshrao Waghmare Versus Moreshwar Bhuausaheb Kadam” reported as 2011(2) R.C.R. (Criminal) 632***, and has submitted that in both the cases, the order dismissing the application under



Section 311 Cr.P.C. has been set aside and the complainant was allowed to be recross-examined.

4. Heard and case file and the judgments relied upon have also been perused.

5. Before delving into the merits of the case, it would be apposite to discuss section 311 Cr.P.C which is reproduced herein below:-

Section 311. Power to summon material witness, 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 re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

6. In the present case, the complainant has already adduced evidence and has been cross-examined by the accused/petitioner and statement under Section 313 Cr.P.C. has already been recorded after putting all the incriminating material coming on record to the petitioner-accused. But instead of leading defence evidence, the petitioner-accused has moved the application under Section 311 Cr.P.C. to seek permission of the Court to recall the respondent-complainant for re-cross examination but the application of the petitioner/accused has been dismissed by the learned trial Court on the ground that the application is very vague as the applicant/accused did not even bother to mention the documents regarding which he wants to cross-examine the complainant. The trial Court has observed that the complainant has agreed in her cross-examination that she has copy of the agreement to sell with her which is Mark-A which shows that



she was cross examined at length with respect to the disputed agreement to sell and moreso, the accused in his statement under Section 313 Cr.P.C. has also admitted that the complainant has been cross examined at length, therefore, when the complainant has already been examined at length by the accused, then there is not ground made out to allow the application under Section 311 Cr.P.C. and accordingly, dismissed the same. This Court does not find any illegality and ambiguity in the order of the learned trial Court whereby the application of the petitioner under Section 311 Cr.P.C. has been dismissed for failure of the petitioner to refer to even a single document in his application on which the complainant's recross-examination is needed.

7. Further, the Apex Court in ***“Vijay Kumar vs State of U.P. & Anr, 2011 (8) SCC 136”*** has held that :-

“though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the code and the principles of criminal law. The discretionary power conferred under section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”

8. An application under section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party . What is required to be seen is the essentiality of the evidence sought to be brought on record.

9. As regards the judgments on which reliance has been placed by the petitioner counsel, it is worth-noting here that the judgement in Sunder Lal's case (supra) is not applicable to the case of the petitioner because in the said judgment, application under Section 311 Cr.P.C. was filed immediately



after closure of evidence of complainant and statement of accused under Section 313 Cr.P.C. was yet to be recorded. Meaning thereby, defence evidence was yet to commence. Similarly, the case law *Vikas Surshrao Waghmare's case (supra)* also, the application under Section 311 Cr.P.C. was filed immediately after the evidence from the complainant side was completed but the same was dismissed. However, in the present case, the defence evidence has already commenced by the recording of statement of accused under Section 313 Cr.P.C.

10. Therefore, going by the essentiality test, it can be clearly seen that the present application under section 311 Cr.P.C. is only an after thought to fill the lacuna in the prosecution story which the court does not deem fit to allow.

11. As the order passed by the learned trial Court, dated 14.10.2024, Annexure P-6, is a just and proper order, this Court does not find any reason to interfere with the order and the same is hereby upheld.

12. In view of the above discussions, the present petition stands dismissed.

03.12.2024

Meenu/anuradha(v)

(SANDEEP MOUDGIL)
JUDGE

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