

2024:PHHC:169239



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118

CRM-M No.62687 of 2024
Date of Decision: 13.12.2024

Sarwan Kumar ... Petitioner

Versus

Madhav Singh ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Namish Sodhi, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (For short “BNSS”) by the petitioner seeking quashing of order dated 08.10.2024 passed by the Court of learned Judicial Magistrate 1st Class, Ludhiana in Criminal Complaint bearing No.COMA/5036/2018 and filed under Section 138 of Negotiable Instruments Act, 1881 (For short “NI Act”) whereby an application filed by the petitioner under Section 311 of Code of Criminal Procedure (For short “Code”) had been dismissed.
2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner had filed the aforementioned complaint against the respondent under Section 138 of the NI Act on the allegations

2024:PHHC:169239



that he had issued two cheques for sums of Rs.6 lakhs and Rs.2 lakhs respectively to discharge his legally enforceable debt and those cheques had been dishonoured on presentation and that he failed to pay the amount of the cheques. During the pendency of this complaint, the petitioner filed an application under Section 311 of the Code thereby making prayer to permit him to place on record a stamp paper on the ground that he had given friendly loan to the respondent and a written agreement was executed by both the parties in this regard on a stamp paper purchased by the respondent. The respondent accused had attested the stamp paper. The said document had previously been lost and that is why could not be presented at the time when the petitioner was leading evidence before the trial Court. It was submitted that the proposed document if produced by way of additional evidence would help the Court in arriving at a just conclusion and it would bring more clarity in evidence.

3. The respondent contested the application by filing reply alleging therein that the proposed evidence was tried to be produced to fill up the lacuna in the case of the petitioner.

4. Vide order dated 08.10.2024 the learned trial Court dismissed the application by observing that the allowing of the additional evidence would amount to reopening of the case which is at the stage of producing defence evidence and by further observing that there was no allegation in the complaint qua execution of any agreement between the parties.

5. Feeling aggrieved, this petition has been filed.

2024:PHHC:169239



6. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and is liable to be set aside, since the proposed additional evidence is quite necessary for just decision of the case as it would prove that the respondent had executed an agreement qua availing friendly loan from the petitioner. Therefore, it is argued that the petition deserves to be allowed, the impugned order is liable to be set aside and the agreement to sell by way of additional evidence, deserves to be produced in the complaint.

7. I have heard learned counsel for the petitioner at considerable length and have gone through the record.

8. At the outset, it may be mentioned that the well settled proposition of law is that though the powers under Section 311 of Cr.P.C. can be invoked by the Court to meet the ends of justice and for strong and valid reasons but they should be exercised with great caution and circumspection. This provision confers vast discretion upon the Court and is expressed in the widest possible terms. The discretionary power under the said Section can be invoked to meet the ends of justice and has to be exercised judicially and not arbitrarily or capriciously. The provisions of this Section should be exercised consistently with the provisions of the Code and the criminal law. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court passed in '*State vs. N. Seenivasagan, AIR 2021 Supreme Court 2441*', wherein it has been observed that the true test for the purpose of this Section is, whether it appears to the Court that the evidence

2024:PHHC:169239



of such person who is sought to be produced is essential for just decision of the case and to '*Manju Devi Vs. State of Rajasthan, (2019) 6 SCC 203*', wherein it was observed that the discretionary powers under section 311 of Cr.P.C. are intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone including the accused. Reference can also be made to **Swapan Chatterjee v. Central Bureau of Investigation, 2019 (2) Scale 654**, wherein it was observed by Hon'ble Supreme Court that the power conferred under Section 311 of the Code should be invoked only to meet the ends of justice and for strong and valid reasons, with great care and circumspection.

9. In view of the ratio of law as laid down in the above cited authorities, it can be stated that the powers for recall of a witness or for production of additional evidence can be exercised only when the evidence which is likely to be tendered is germane to the issue involved and cannot be allowed only to fill up the 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 and even to give an unfair advantage to the opposite party. Now coming to the instant case, the petitioner is making prayer to permit him to produce by way of additional evidence a stamp paper alleged to be a written agreement executed by both the parties. The application before the trial Court for this purpose had been moved by the

2024:PHHC:169239



petitioner at the stage of producing defence evidence. A copy of the document has been placed on record and a perusal of the contents of the same reveals that an agreement had been executed between the parties qua taking amount of Rs.8 lakhs by the respondent from the present petitioner on 20.06.2017. Though in the complaint, Annexure P-1, there is no specific allegation qua execution of any document by the respondent but nonetheless there are specific allegations that the respondent had taken loan of Rs.8 lakhs from the petitioner on 20.06.2017 with a promise to return the same within three months and the proposed document also contains the same writing. As such it can reasonably be presumed that the proposed document was executed in the same transaction qua which the cheques in question had been issued by the respondent. In such circumstance, in the opinion of this Court, opportunity must be given to the petitioner to prove the abovementioned document in evidence as it cannot be stated that the proposed evidence is sought to be produced to fill up any lacuna. It is the duty of the Court to allow such evidence which is required for just decision of the case and the determination of a prayer is to be based on essentiality of evidence. It would not an improper exercise of powers of the Court to allow the petitioner to produce the proposed document by way of additional evidence. As such, the impugned order is set aside, the petition is allowed and the direction is given to the learned trial Court to allow the petitioner to produce the abovementioned document by way of additional evidence. It is, however, clarified that the petitioner will be granted only one opportunity to produce

2024:PHHC:169239



the same by way of additional evidence and the respondent shall be given due opportunity to cross-examine the petitioner qua the aforementioned document only.

10. A copy of this order be sent to the trial Court.

13.12.2024
manju

(MANISHA BATRA)
JUDGE

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