



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 16.04.2024

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CRL.M.C. 1189/2023

RAJA RAM

..... Petitioner

Through: Mr. Sunil Dahiya, Advocate.

Versus

SH PAWAN KUMAR VERMA

..... Respondent

Through: Mr. Rahat, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks to assail the order dated 24.12.2022 passed by learned M.M. in Complaint Case No. 6897/2017 vide which petitioner's application under Section 311 Cr.P.C. seeking directions to place on record additional documents came to be dismissed.

2. Apparently, the order came to be passed in proceedings instituted under Section 138 of the Negotiable Instrument Act, 1881 by the respondent against the petitioner in relation of dishonour of cheque bearing No.000015 dated 15.08.2017 for an amount of Rs.8 lacs, stated to have been given in the context of a loan transaction. In the said proceedings, petitioner took a defence that he had no liability towards the complainant/respondent for the loan of Rs.8 lacs. It was stated that respondent was in the business of sending persons abroad and that though petitioner's son was also sent to Australia, however, his son could not get a full-time job. In the cross-examination, the respondent declined the suggestion of sending petitioner's



son to Australia.

3. In view of respondent's denial, the petitioner examined one *Vinay Kukreja* as DW-2 whose examination-in-chief was recorded on 23.11.2021 and cross-examination was conducted on 30.03.2022. In his examination-in-chief, *Vinay Kukreja* deposed about the business of the respondent. He further stated that he was sent to Australia by the respondent for which purpose, a sum of Rs.15 lacs was demanded for obtaining temporary visa and other facilities. The witness stated that he had paid Rs.13 lacs in cash and further two blank cheques of his mother were also given to the respondent for securing the remaining amount of Rs.2 lacs. In his chief, the witness further stated that he had met the petitioner's son who had informed him that the respondent had sent him to Australia. The visa of the petitioner's son was sent on email ID i.e., ms98758@gmail.com which was created by the respondent. It was further stated that a written complaint was made to Cyber Crime Branch at Hari Nagar, pursuant to which an FIR bearing No. 88/2018 came to be registered under Section 420 IPC at P.S. Rajouri Garden.

4. In the cross-examination of the aforesaid witness, upon a suggestion by the respondent that the email sought to be relied upon was forged, the witness denied the said suggestion and sought to exhibit an interrogation report dated 08.02.2018 of the respondent in FIR No. 88/2018. On the respondent raising objection qua the same, the Court observed that since the document was not exhibited during the chief and no question qua the said document has been put in cross-examination, the said document cannot be exhibited and taken on record. A revision petition was preferred against the said objection, however, the same came to be dismissed vide order dated



01.09.2022 on the ground that the same was interlocutory order and thus, the bar under Section 397(2) Cr.P.C. would be applicable in the said case. In the same order, it was further noted that the petitioner (revisionist therein) had already taken steps by filing the application under Section 311 Cr.P.C.

5. The petitioner had moved application under Section 311 Cr.P.C. to lead additional evidence and produce documents namely interrogation report dated 08.02.2018 of the respondent conducted in the aforementioned FIR and the bank statement provided by the respondent alongwith another interrogation report dated 18.10.2018. Vide the impugned order, the said application came to be dismissed.

6. In the present proceedings, learned counsel for the petitioner has challenged the impugned order on the ground that the learned MM erred in understanding and interpreting the order of dismissal in the revision petition inasmuch as the said dismissal did not bar the petitioner from filing an application for leading of additional evidence. It is submitted that the additional documents are essential as the respondent in the interrogation report had disclosed that he was engaged in the business of providing tourist as well as business visa. Further, the objection of the respondent to exhibiting of the interrogation report dated 08.02.2018 that no question was put in the cross-examination in response to which the said document could be taken on record is inconsequential as far as the application under Section 311 is concerned.

7. The petition is vehemently opposed by learned counsel for the respondent who has contended that the order passed by the learned MM is proper and legally tenable.

8. Before advertng to the facts of the present case, it would be



beneficial if the principles surrounding Section 311 Cr.P.C. are discussed.

Section 311 of the Cr.P.C. reads as under:-

“311. Power to summon material witness, or examine person present: (1) Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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.”

9. The contours of Section 311 have been succinctly expressed by the Supreme Court in the judgement of Rajaram Prasad Yadav v. State of Bihar & Anr.¹, wherein it was observed:-

“xxx

14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined... The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined... Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.

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17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C.

¹ (2013) 14 SCC 461



read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new evidence is needed by it? Whether new evidence sought to be led in under Section 311 is noted by the court for a just decision of the case.

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgement should not be rendered inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. If evidence of any witness appears to the court to be essential to the just decision of the case, it is the power of the court to summon and examine or recall and re-examine any such person.

17.4. The exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

17.5. The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. The court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. The court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgement without it, but because there would be failure of justice without such evidence being considered.

17.10. Exigency of the situation, fair play and good sense should



be the safeguard, while exercising the discretion. The court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified.

17.11. The court should be conscious of the position that after all the trial is basically for the prisoners and the court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

17.14. The power under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

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10. Admittedly in the present case, vide the Section 311 Cr.P.C. application, the petitioner had sought to lead additional evidence and place on record interrogation report dated 08.02.2018 and the bank statement as well as interrogation report dated 18.10.2018. The said application was



dismissed stating therein that since the Predecessor Bench, while considering the objection raised by the respondent during the cross-examination of DW-2, had made a determination (which also came to be upheld by the Revisionary Court) and thus, learned MM could not pass any favourable order as the same would amount to recall of the previous order/determination.

11. The document sought to be brought on record by the said application was presented at the time of cross-examination of DW-2 and the same were not exhibited and taken on record consequent to the objection by the respondent. The prime consideration while dealing with an application under section 311 Cr.P.C., as enumerated in the extract of the decision above, is the objective of finding out the truth or obtaining proper proof for such facts, which would lead to a just and correct decision of the case. As per the petitioner, the said documents becomes crucial in the sense that in the said documents, the respondent had admitted that he was engaged in the business of tourist visa as well as business visa and therefore, the same was crucial/fundamental in the determination whether the money involved in the present matter was given as a loan or to send the petitioner's son abroad.

12. It is further interesting to note that the decision of the revision petition which weighed so heavily upon the learned MM while passing the impugned order, was passed owing to the fact that the bar of Section 397(2) Cr.P.C. was applicable and it was further noted that an application under Section 311 Cr.P.C. came to be filed by the petitioner.

13. Considering the overall facts of the case as well as the fact that the documents sought to be placed on record are documents which are germane to the petitioner's case and further, that the respondent has failed to show



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how bringing the said documents on record would be detrimental to the trial of the case, the present petition is allowed and the petitioner is permitted to lead additional evidence. The petition is disposed of in the above terms.

14. Copy of the order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI
(JUDGE)

APRIL 16, 2024

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