



2024:DHC:9306



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

% **Date of order: 2nd December, 2024**

+ CRL.M.C. 1593/2024 & CRL.M.A. 6194/2024 & CRL.M.A. 6195/2024

ANIL KUMAR

.....Petitioner

Through: Mr. Ravin Rao, Mr. Pallav Gupta,
Mr. Akshit Sawal, Mr. Ayan Sharma
and Mr. Yashasvi Yadav, Advocates

versus

PRINCY

.....Respondent

Through: Mr. Rajni Gupta and Mr. Shivender
Gupta, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter "CrPC") [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter "BNSS")] has been filed on behalf of the petitioner seeking setting aside of the order dated 22nd December, 2023 (hereinafter "impugned order") passed by the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Courts, Delhi (hereinafter "learned MM") in Ct. Cases 2341/2020.

2. The brief facts that led to the filing of the instant petition are that the respondent herein filed the aforesaid case against the petitioner under



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Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”). In the said complaint case, the learned MM summoned the petitioner vide order dated 28th January, 2021 following which the notice was framed against him. The petitioner then moved an application under Section 145(2) of the NI Act, thereby, seeking permission to cross examine the respondent and the learned MM allowed the said application pursuant to which the matter was fixed for recording complainant/respondent’s evidence.

3. Thereafter, the examination of the respondent was conducted, wherein, the respondent was cross-examined and discharged, and the complainant evidence was closed vide order dated 11th May, 2023. Following the same, the matter was kept for recording of statement of accused under Section 313 of the CrPC (now Section 351 of the BNSS).

4. It is stated that the respondent moved an application on 12th April, 2023 under Section 311 of the CrPC (now Section 348 of the BNSS) seeking to bring on record certain additional documents and summoning of witness.

5. Subsequently, on 18th September, 2023, the respondent moved another application under Section 311 of the CrPC (now Section 348 of the BNSS) seeking permission of the Court concerned to allow the complainant, her husband and the bank clerk of Axis Bank, DBG Road, Dev Nagar, Delhi – 110005 (account no. 918020095804484, Axis Bank, DBG Road) be examined in the interest of justice. It was stated in the said application that the amount was transferred by the respondent in the above mentioned bank account. The said application was allowed vide the impugned order dated 22nd December, 2023. Being aggrieved by the same, the petitioner has



approached this Court seeking setting aside of the same.

6. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is illegal, improper and bad in law as the same has been passed without considering the entirety of the matter.

7. It is submitted that the learned MM failed to appreciate that the provision of Section 311 of the CrPC is neither meant for opening a new case nor for corroborating or supporting an improvement made during examination of witness and hence, the application was wrongly allowed.

8. It is submitted that the learned MM has passed the impugned order mechanically and without appreciating the fact that the respondent knowingly did not bring on record the said information, despite having knowledge about the same and the learned MM erroneously summoned the bank clerk without going into the merits of the case.

9. It is submitted that the respondent's application ought not to have been entertained by the learned MM since the person to whom the amount was allegedly paid, as claimed in the application, was never issued any legal demand notice under the NI Act. Further, the said person has never been sought to be prosecuted for non-payment of any dues.

10. It is submitted that the learned MM failed to appreciate that the provisions of Section 311 of the CrPC cannot be allowed to fill up the lacunae at the time when the case had reached the stage of final arguments.

11. It is submitted that the learned MM failed to appreciate that whatever documents the respondent has sought to place on record were in her possession since beginning and no explanation has been given for not filing



the same in the first instance, i.e., at the stage of filing of the complaint. Further, the law does not permit placing of such documents at a belated stage as the same would prejudice the other party.

12. It is submitted that the learned MM failed to appreciate the fact that the case of an advance amount of Rs. 9,00,000/- to the accused by the complainant/respondent pertains to the period of October, 2019, but the details sought to be summoned as per their record pertain to the period of November, 2019, so the same amount cannot be construed to be of the same transfer. It is further submitted that the learned MM failed to appreciate that the amount claimed is Rs. 9,00,000/- but the details, as mentioned in the application dated 12th April, 2023 shows Rs. 9,60,000/-.

13. Therefore, in view of the forgoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

14. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits.

15. It is submitted that the impugned order has been passed in accordance with the law and there is no illegality committed by the learned MM, thus, the instant petition is a gross misuse of the process of law.

16. It is submitted that during the course of proceedings before the learned MM, the respondent filed an application under Section 311 of the CrPC to bring on record some additional documents which are important for the adjudication of the dispute.

17. It is further submitted that the said documents could not be brought on



record at the time of filing of the complaint due to the inadvertent error and the documents had not been stated in the complaint and in the interest of justice as well as for the just decision of the case, the application under Section 311 of the CrPC was filed before the learned MM.

18. It is submitted the learned MM, vide the impugned order, allowed the application of the respondent and summoned the bank clerk as a witness so that the evidence could be brought to establish the transactions as mentioned.

19. It is further submitted that the learned MM rightly allowed the respondent's application as the same was essential for the just adjudication of the matter before the learned Trial Court and no prejudice will be caused to the petitioner rather the same would further the cause of justice.

20. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be dismissed being devoid of any merits.

21. Heard the learned counsel appearing on behalf of the parties and perused the material placed on record.

22. Before advertng to the issue at hand, this Court finds it appropriate to discuss the settled position of law with respect to Section 311 of the CrPC (now Section 348 of the BNSS). The relevant portion of Section 311 of the CrPC is reproduced herein below for reference:

“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.”

23. Perusal of the aforesaid extracts of the provision shows that the same gives power to the Court to summon material witness or examine a person at any stage of enquiry, trial or other proceeding and summon/examine/recall any person as a witness if the same is essential for imparting just decision in a case as well as for a fair trial.

24. Section 311 of the CrPC consists of two parts; the first gives power to the Court to summon any witness at any stage of inquiry, trial or other proceedings, whether the person is listed as a witness, or is in attendance though not summoned as a witness. Secondly, the Trial Court has the power to recall and re-examine any person already examined if his evidence appears to be essential to the just decision of the case.

25. In ***Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461***, the Hon’ble Supreme Court enunciated the principles and scope of the aforesaid provision and stated as under:

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC 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 the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under



Section 311 CrPC should ensure that the judgment should not be rendered on 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 judgment without it, but because there would be a 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.”

26. Upon perusal of the above excerpts, it is made out that the settled position of law *qua* Section 311 of the CrPC is that while exercising power under the said provision, the Court should be *prima facie* of the opinion that



the new evidence/witness etc. is essential for the just decision of the case. Further, although the powers of the Court under the said provision is wide and discretionary, however, the same should not be exercised arbitrarily, and the Court should ensure that it is not exercising its powers under the said provision based on speculative presentation of facts. Moreover, the exercise of the said powers cannot be dubbed as filling in a lacuna in the complainant/prosecution case, unless the facts of the case make it apparent that the exercise of such powers would cause serious prejudice.

27. In *State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402, the Hon'ble Supreme Court, reiterated the concept enshrined under Section 311 of the CrPC and observed that the powers of a Court under Section 311 of the CrPC is undoubtedly wide and the same ensures that the objective of fair trial is achieved by the Court. It was also observed that the exercise of powers under Section 311 of the CrPC should be resorted to only with the intention to ascertain the truth or to obtain proper proof of facts which will lead to imparting just decision. The same was also followed by the Hon'ble Supreme Court in *State of Rajasthan v. Asharam*, 2023 SCC OnLine SC 423.

28. At this juncture, this Court shall peruse the impugned order, relevant extracts of which is as under:

“Vide this order, I shall dispose off the application u/s 311 Cr.PC. filed on behalf of complainant.

Ld. counsel for the complainant submits that an amount of Rs. 9,60,000/- was debited from the bank account of the complainant and credited into a bank account bearing no.



918020095804484, Axis Bank, DBG Road, at the instance of the accused in the year 2019. It is further submitted that the aforesaid material evidence could not be placed on record at the time of examination of the complainant and it is therefore prayed that the complainant, her husband namely Praveen and the bank official be examined to bring the aforesaid details on record.

Per contra, Ld. counsel for the accused submits that through the application in question, the complainant wishes to change the nature of his case and therefore the said application cannot be allowed. It is also submitted that the aforesaid information was already in the knowledge of the complainant at the time of leading of evidence by the complainant and hence, he cannot be permitted to bring on record additional information at such a belated stage. It is therefore prayed that the application be dismissed.

Submissions heard. Record perused.

A perusal of the complaint filed by the complainant shows that she has stated that she had given a loan of Rs. 9 lakhs in the month of October, 2019 without any interest for a period of three months. It is pertinent to note here that it has not been mentioned by the complainant that the aforesaid loan was given by way of cash or cheque. Further, in the cross-examination of the complainant conducted on 11.05.2023, the complainant was not cross examined on the line as to how she paid the loan in question to the accused. Through the present application, the complainant wishes to place on record the mode through which the money was given by the complainant to the accused i.e. by way of bank transfer from the account of the complainant to the account, the details of which were given by the accused. The court does not find that the information sought to be placed on record by the complainant changes the nature of the present matter as it only clarifies the mode of payment of the loan to the accused. However, the court is mindful of the fact that the said information was in possession



of the complainant earlier as well and the present application has been filed belatedly.

In view of the aforesaid observations, the Court is of the considered opinion that for proper adjudication of the present matter, the present application be allowed only to the extent that the complainant be permitted to summon the bank witness in order to establish the transaction as mentioned in the present application. No prejudice would be caused to the accused as he would have ample opportunity to cross examine the witness, if required. For the delay in filing of the present application, the application is allowed subject to cost of Rs. 5,000/- imposed on the complainant to be given to the accused on the NDOH.

Let the bank witness be summoned on filing of PF, returnable for NDOH. Let the complete details of the witness to be summoned alongwith the record be filed alongwith the PF by the complainant....”

29. Perusal of the aforesaid extracts of the impugned order shows that the respondent herein had filed an application under Section 311 of the CrPC stating that certain amount was transferred to the abovementioned account number. It was submitted that the said details could not be filed earlier at the time of examination of the complainant/respondent due to inadvertent error.

30. The said application was vehemently opposed by the petitioner herein on the ground that the respondent cannot be permitted to set up a new case or fill lacunae in the case at this stage.

31. In view of the aforesaid submissions advanced by the parties, the learned MM observed that since substantial amount of money has been transferred from the account of the respondent to the abovementioned bank account number, the best witness to establish the transaction would be the



bank clerk itself.

32. In view of the aforesaid observations, the learned MM summoned the bank clerk as a witness and held that the same is necessary for the just decision. It also imposed a cost of Rs. 5,000/- as the respondent did not bring on record the said information in a timely manner, despite being in possession of the same.

33. This Court has meticulously examined the entire material on record including the copy of the complaint case, impugned order, application filed by the respondent under Section 311 of the CrPC and reply of the petitioner to the said application.

34. Upon examination of the relevant material on record, this Court is of the view that the impugned order passed by the learned MM does not suffer from any illegality or irregularity.

35. It was stated in the aforesaid application that the respondent had transferred certain amount into the bank account bearing no. 918020095804484, Axis Bank, DBG Road. In view of the same, the respondent had sought permission of the Court concerned to allow the complainant, her husband and the bank clerk be called for examination in the interest of justice.

36. The petitioner herein has contended that by the said application, the respondent has tried to set up a new case which is impermissible in the law, However, upon perusal of the records, it is revealed that the 'mode and manner of advancement of money to the petitioner herein' has not been mentioned anywhere, i.e., the complainant has not mentioned the complaint



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as to whether the money was given to the accused by cash or cheque.

37. With regard to the above, this Court is of the view that the contention of the petitioner that the respondent is trying to set up a new case does not hold any water. No where the record reveals that the reliefs sought under Section 311 of the CrPC tries to set up a new case.

38. Instead, the record clearly states that the by virtue of the said application, the respondent merely sought to allow the complainant, her husband and the bank clerk to be called for examination and the same only serves the purpose of clarifying the case against the petitioner. Further, the bank clerk, as a witness, merely furthers the already instituted complaint case. Moreover, this Court is of the considered view that the transactions shown by the respondent in her application pertain to the debt and liability which is the subject matter of the complaint filed by the respondent under Section 138 of the NI Act against the petitioner. Additionally, the cheques which have been dishonored, for which the said complaint was filed, were issued by the respondent to repay the friendly loan availed by him, money for which was transferred by the respondent in the said bank account number as alleged.

39. It is a settled position of law that under Section 311 of the CrPC, the Courts have wide powers and the same have to be used sparingly. In the instant case, the respondent had sought the permission of the Court concerned to allow the complainant, her husband and the bank clerk of Axis Bank, DBG Road, Dev Nagar, Delhi – 110005 (account no. 918020095804484, Axis Bank, DBG Road) be examined in the interest of



justice as the amount was transferred by the respondent in the above mentioned bank account, details of which were given to the complainant/respondent's husband by the petitioner herein. In view of the same, the learned MM formed the opinion that the bank clerk would be the best witness to establish the transaction.

40. Therefore, the aforesaid observation and decision of the learned MM cannot be considered as illegal exercise of its powers under Section 311 of the CrPC as the same is not arbitrary and within the ambit of the subject matter of the complaint case filed by the respondent. Further, this Court is of the view that no prejudice would be caused to the petitioner as he would have ample opportunity to cross-examine the witness in accordance with the law which has also been noted by the learned MM in the impugned order.

41. Further, while holding that the respondent had filed the application at a belated stage, cost of Rs. 5,000/- was imposed upon him. With respect to the same, this Court is of the view that the said cost was imposed upon the respondent to meet the ends of the justice due to filing of the said application after unjustified delay.

42. Thus, this Court is inclined to concur with the reasoning given by the learned MM and is of the opinion that the direction passed by the learned MM is in the interest of justice and in furtherance to meet the ends of justice as well as to ensure that a fair trial is conducted by bringing on record the correct factual situation.

43. Here, it is pertinent to mention that the contention of the petitioner with regard to the disputed quantum of money is the subject matter of trial



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which cannot be entertained by this Court at the current stage.

44. Thus, it is held that the power exercised by the learned MM, vide the impugned order, by summoning the bank clerk as a witness is germane to the issue involved for which the petitioner would be having sufficient opportunity to cross/examine the same in accordance with the law.

45. In view of the above discussions on facts and circumstances as well as settled position of law, this Court is of the view that there is no illegality in the impugned order dated 22nd December, 2023 passed by the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Courts, Delhi in Ct. Cases 2341/2020 is, hereby, upheld.

46. Accordingly, the instant petition stands dismissed along with the pending applications, if any.

47. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

DECEMBER 2, 2024
gs/ryp/av

Click here to check corrigendum, if any