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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of decision: 27.03.2024***+ **CRL.M.C. 2446/2024****DALJEET SINGH SAINI**

..... Petitioner

Through: Mr.Mohd. Bilal, Adv.

versus

THE STATE AND ANOTHER

..... Respondents

Through: Mr.Satinder Singh Bawa, APP

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)****CRL.M.A. 9322/2024 (Exemption)**

1. Allowed, subject to all just exceptions.

CRL.M.C. 2446/2024 & CRL.M.A. 9321/2024

2. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the order dated 21.12.2023 passed by the learned Additional Sessions Judge-05, South West District, Dwarka, Delhi in Criminal Revision No.513/2020, titled ***Daljeet Singh Saini v. Gulbadan Panwar***, dismissing the same as being not maintainable.

3. The petitioner also challenges the order dated 02.09.2022 passed by the learned Metropolitan Magistrate (NIA)-02/South West District, Dwarka Courts, Delhi in Misc. Cases/4305/2017, ***Gulbadan Panwar v. Daljeet Singh Saini***, dismissing the application under



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Section 311 of the Cr. P.C filed by the petitioner herein, who is the accused in the said case filed by the respondent no. 2 under Section 138 of the Negotiable Instruments Act, 1881.

4. The learned counsel for the petitioner submits that the above application had been dismissed only because the earlier counsel did not appear when the matter was called. There was a request for a pass-over made, which was declined by the learned Metropolitan Magistrate.

5. He submits that further cross-examination of the complainant is essential inasmuch as the vital questions have not been put to the complainant, which would prejudice the case of the petitioner herein.

6. I have considered the submission made by the learned counsel for the petitioner.

7. In the complaint case, evidence of the complainant was recorded on 12.11.2021. On 13.12.2021, the statement of petitioner under Section 313 of the Cr. P.C. was recorded. The case was thereafter listed for recording of the evidence on behalf of the petitioner. It is at that stage, that the petitioner filed an application under Section 311 of the Cr.P.C., seeking recall of the complainant for further cross-examination. The ground urged in the application is rather vague, and is reproduced herein below:

“2. That the accused/applicant wants only one/single opportunity to cross examine the complainant because there are some very vital questions have been left from asking for the proper adjudication of the present case and for rebuttal of the stand/case of the complainant.

3. That the applicant/accused is not under any



legal liability to pay anything to the complainant and it cannot be proved unless and until the accused/ applicant is allowed by this Hon'ble Court to cross examine the complainant properly by granting only one opportunity.

4. That the applicant/accused is the victim in the present case and the complainant has misused his cheques by misusing the process of law with mala tide intention and ulterior motives."

8. Apart from the above, the application merely parrots the ground on which the application under Section 311 of the Cr.P.C. is normally allowed by a Court. The application, therefore, lacks material particulars.

9. The application came to be dismissed by the learned Trial Court vide its order dated 02.09.2022. The detailed order that has been passed by the learned Metropolitan Magistrate is not placed on record. This itself shows the callous nature of the present petitioner.

10. It is well settled that power under Section 311 of the Cr.P.C. is exercised sparingly and in the interest of justice. In ***Ratanlal v. Prahlad Jat***, (2017) 9 SCC 340, the Supreme Court has held as under:

"17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not



only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. *In Vijay Kumar v. State of U.P. (2011) 8 SCC 136, this Court while explaining scope and ambit of Section 311 has held as under: th*

“17. Though Section 311 confers vast discretion upon the court and is expressed in 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 [CrPC] 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.”

19. *In Zahira Habibullah Sheikh (5) v. State of Gujarat (2006) 3 SCC 374, this Court has considered the concept underlying under Section 311 as under:*

“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be



an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”

20. In State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402, it was held thus:

“... Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary “for ensuring fair trial” is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with



the other relevant considerations including uncalled for hardship to the witnesses and uncalled for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined.

21. *The delay in filing the application is one of the important factors which has to be explained in the application. In Umar Mohammad v. State of Rajasthan (2007) 14 SCC 711, this Court has held as under:*

“38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7 1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examination in-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.”

11. In **Swapan Kumar Chatterjee v. CBI**, (2019) 14 SCC 328, the Supreme Court has held as under:



“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

e. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

12. The above view in **Ratanlal** (Supra) and **Swapan Kumar Chatterjee** (Supra) has been reiterated by the Supreme Court in **Satbir Singh v. State of Haryana**, 2023 SCC OnLine SC 1086.

13. It appears that the only reason for filing of the application under Section 311 of the Cr.P.C. was the change of counsel by the petitioner. This cannot be a valid ground for recall of the witness. Reference in this regard may be made to the judgement of the Supreme Court in **State of Haryana v. Ram Mehar & Ors.**, (2016) 8 SCC 762.



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14. In view of the above, I find no merits in the present petition. The same is accordingly dismissed. Pending application is also disposed of.

NAVIN CHAWLA, J

MARCH 27, 2024/Arya/RP

Click here to check corrigendum, if any