



2024:DHC:9307



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

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

+ **CRL.M.C. 3300/2023 & CRL.M.A. 12346/2023**

ANIL KUMAR

.....Petitioner

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

versus

PARVEEN KUMAR

.....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 31st March, 2023 (hereinafter “impugned order”) passed by the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Courts, Delhi (hereinafter “learned MM”) in Ct. Cases 4622/2020.

2. The brief facts that led to the filing of the instant petition are that the



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respondent herein filed the aforesaid case against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “NI Act”). In the said complaint case, the learned MM, vide order dated 23rd September, 2021 summoned the petitioner 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 21st January, 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. Subsequently, on 16th February, 2023, the respondent moved an application under Section 311 of the CrPC (now Section 348 of the BNSS) to bring on record his bank statement showing certain transactions in the name of the proprietor concern of the petitioner’s wife namely Suman Agro and also prayed for summoning the bank clerk of Axis Bank, DBG Road, Dev Nagar, Delhi – 110005 with the details of account in the name Suman Agro, the proprietor concern of the petitioner’s wife. The said application was allowed vide the impugned order dated 31st March, 2023. Being aggrieved by the same, the petitioner has approached this Court seeking setting aside of the same.



5. 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.

6. 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.

7. It is submitted that the learned MM has passed the impugned order mechanically and without appreciating the fact that the reliefs sought by the respondent in his application was limited to seek permission to place on record the bank statement and summon the clerk of the bank, however, the learned MM went beyond the reliefs sought in the application and erroneously summoned the wife of the petitioner as a court witness before the Court concerned.

8. 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.

9. 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.

10. It is submitted that the learned MM failed to appreciate that whatever documents the respondent has sought to place on record were in his



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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.

11. It is submitted that the learned MM failed to appreciate the fact that though the complainant's case was that entire payment was of Rs. 35,00,000/- was made in October, 2019, however the document through which the complainant seeks to prove the making of payment to Suman Agro stretching from 25th October, 2019 to 28th November, 2019 and only an amount of Rs. 50,000/- and Rs.1,50,000/- (Total Rs. 2,00,000/-) is shown to have been transferred in October, 2019, then how such transfer of amount, if any, can be connected with the present case.

12. 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.

13. *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.

14. 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.

15. 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.



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16. 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 of the previous counsel of the respondent, however, during the cross examination of the respondent, it came to light that the some facts and 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.

17. It is submitted that during the cross examination of the respondent before the learned MM, in response to a specific question as to how money was transferred to the accused/petitioner, the respondent stated that he had transferred the money on the instructions of the petitioner, in the account number given to the respondent and the said account belonged to his wife.

18. It is further submitted that subsequent to the cross-examination, the aforesaid application was filed by the respondent to bring additional evidence on record which was essential for the adjudication of the case.

19. It is submitted the learned MM, vide the impugned order allowed the application of the respondent and summoned the wife of the petitioner (proprietor of 'Suman Agro' in whose bank account the funds were transferred by respondent) as a court witness so that the evidence could be brought on record to clarify as to for what purpose the substantial amount was transferred to her bank account by the respondent.

20. 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 by bringing on record the transactions made through bank, rather it would further the cause of justice.

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

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

23. 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.”

24. 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.

25. 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.

26. 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.”

27. 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.

28. In *State (NCT of Delhi) v. Shiv Kumar Yadav*, (2016) 2 SCC 402, the Hon'ble Supreme Court, reiterated the concept enshrined under Section



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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.

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

“An application u/s 340 Cr. PC has been moved On behalf of the accused. Taken on record. Copy supplied to the complainant.

An application u/s 311 Cr. PC moved on behalf of complainant is pending for disposal. Written reply to the same has been filed on behalf of accused.

It is submitted by counsel for the complainant that the complainant has transferred money from his account to the account of the wife of accused and it is necessary to bring on record the details of those transactions.

The application is strongly opposed by the counsel for accused stating that the complainant can not be permitted to set up a new case or to fill lacunas in his case at this stage.

Submissions heard. File perused.

In the facts and circumstances of the present case, since substantial amount of money has been transferred» from the account of the complainant to the account of Suman Agro, which is alleged to be the proprietorship concern of the wife of accused, the best witness to clarify whether any amount and for



what purpose was received from the complainant would be the proprietor of Suman Agro.

Since, the amount has been transferred from the account of the complainant, it becomes necessary for the just decision in the present matter that it be ascertained for what purpose and how much amount was received by the proprietor of Suman Agro.

Thus, let proprietor of Suman Agro be summoned as court witness along-with her bank account statement for the year 2019, on filing of PF, for NDOH. The application stands disposed off with the above said directions. However, since the application u/s 311 Cr. PC was filed to place on record the bank statement of the complainant and Suman Agro by way of bank clerk clarified that since this court has opined the proprietor of Suman Agro to be the best the witness to clarify the nature and purpose of the transaction being summoned as court witness u/s 311 Cr. PC...”

30. 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 he had transferred money from his account to the account of the proprietor concern of the petitioner’s wife namely Suman Agro and the said transactions 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. It was submitted that 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 bank account of Suman Agro (proprietor concern of the petitioner’s wife).

31. The said application was vehemently opposed by the petitioner herein



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on the ground that the respondent cannot be permitted to set up a new case or fill lacunae in the case at this stage.

32. 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 account of Suman Agro, proprietor concern of the wife of the petitioner, the best witness to clarify whether any amount and for what purpose was received from the respondent would be the proprietor of 'Suman Agro', i.e., wife of the petitioner.

33. In view of the aforesaid observations, the learned MM held that it becomes necessary for the just decision that it be ascertained as to for what purpose and how much amount was received by the petitioner's wife in the account of Suman Agro. Thus, the petitioner's wife was summoned as a court witness along with the bank account statement. It also held that since the petitioner's wife is the best witness to clarify the nature and purpose of the transaction, she is being summoned as court witness under Section 311 of the CrPC.

34. 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, reply of the petitioner to the said application and copy of the cross examination of the respondent dated 21st January, 2023.

35. 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



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from any illegality or irregularity.

36. Following the cross examination of the respondent on 21st January, 2023, the respondent had filed the application under Section 311 of the CrPC. It was stated in the said application that the respondent had transferred certain money into the account of Suman Agro which is the proprietor concern of the petitioner's wife.

37. 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 cross examination of the respondent, it is revealed that certain questions were put up to him regarding the 'mode and manner of advancement of money to the petitioner herein'. In his response, the respondent had stated that he did not transfer any money in the petitioner's account, however, on various occasions; he had transferred money in the account details given to him by the petitioner which is the account of petitioner's wife.

38. 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. The record no where reveals that the reliefs sought under Section 311 of the CrPC tries to set up a new case. Instead, the record clearly states that by virtue of the said application, the respondent merely sought to bring on record certain documents and summon the witness (bank clerk), which only serves the purpose of clarifying his case against the petitioner. Further, the said documents and the witness were merely in furtherance of the already instituted complaint case.



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39. Moving further, the petitioner has argued that the learned MM went beyond the reliefs sought in the application and instead of granting the reliefs sought, the learned MM erroneously summoned the petitioner's wife as court witness and the same is in contravention of the law.

40. In regard to the above, this Court is of the considered view that as per the judgment rendered by the Hon'ble Supreme Court, which have been referred to hereinabove, the learned MM did not go beyond its jurisdiction by summoning the petitioner's wife. It is a settled position of law that under Section 311 of the CrPC, the Court have wide powers and the same have to be used sparingly.

41. In the instant case, the respondent had sought to bring on record his bank account statement pertaining to the transactions and summoning of the bank clerk along with the bank account statement/details. The said reliefs were sought in view of the respondent's claim that the money had been transferred to the aforesaid proprietor firm at the request of petitioner. In view of the same, the learned MM formed the opinion that the petitioner's wife would be the best witness to give clarification with regard to the nature of the transactions and its purpose.

42. 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.

43. Moreover, 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



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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.

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

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

46. 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 31st March, 2023 passed by the learned Metropolitan Magistrate-01 (NI Act), Central, Tis Hazari Courts, Delhi in Ct. Cases 4622/2020 and the same is, hereby, upheld.

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

48. 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