



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

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Date of Decision: 14.03.2024

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CRL.M.C. 8172/2023 & CRL.M.A.30399/2023

M/S MAGNUM RESOURCES PVT LTD

..... Petitioner

Through: Mr. Harmanpreet Singh Kohli,
Advocate.

Versus

M/S INDIA SEWING MACHINE COMPANY & ANR Respondents

Through: Mr Sohil Yadav, 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 setting aside of the order dated 21.08.2023 passed by learned MM (NI Act), Saket Courts, New Delhi in CC NI Act 546/2022 whereby respondents' application filed under Section 311 Cr.P.C to summon certain material witnesses came to be allowed.

2. Briefly stated, the present proceedings arise out of a complaint filed by the petitioner under Section 138 NI Act. Cognizance of the said complaint was taken on 09.03.2022, whereafter notice was framed against the respondents/accused on 24.09.2022. Complainant's evidence commenced on 15.04.2023 wherein Authorized Representative of the complainant company was examined as CW-1. The respondents' statement under Section 313 was recorded Cr.P.C on 17.05.2023 whereafter, on the



said date, respondent No.2 examined himself as DW-1. On that date itself, a list of witnesses, which the respondents wished to examine in their defence, was filed. The Trial Court issued summons to the witnesses mentioned at Serial No.2 i.e. 'concerned officials of HDFC Bank Ltd.'. The court then proceeded to hear final arguments on 02.08.2023. Subsequent to this, the subject application under Section 311 Cr.P.C came to be filed by the respondents. By the said application, the respondents sought to examine the following persons:-

“(i) Mr. Jagdeep Singh, aged about 41 years, son of Mr. Sarabjit Singh, Assistant Manager, C/o M/s Sara International Pvt. Ltd., Noble Enclave, Ferozepur Road, Ludhiana along with records.

(ii) Concerned police officer of P.S. Division 8, Ludhiana along with records.

(iii) Concerned official(s) or Manager or both of HDFC Bank Ltd., 1284/95, Sunder Nagar Chowk, Ludhiana - 141007 (Punjab) i.e., Drawer's Bank along with records.

(iv) Expert who may conduct verification of the purported signature of the Accused on the cheque in question along with records.

(v) The driver and the concerned official(s) or Manager or both of the delivery agency through which the goods were purportedly delivered at the location as alleged by the complainant along with records.”

3. The scope and power of a Court under Section 311 Cr.P.C is well established and has been crystallized through judicial pronouncements. It has been held time and again that the power under Section 311 Cr.P.C. is to be exercised to determine the truth and render a just decision after discovery of all the relevant facts and obtaining proof thereof. The said power has to be exercised judiciously and not capriciously or arbitrarily. Further, an



application under Section 311 Cr.P.C. ought not to be allowed merely to fill up the lacuna/gaps in the case of either party or to give any unfair advantage to one of them. The application has to be considered on the touchstone whether the evidence sought to be produced is germane to the issue involved or not. In other words, the court has to exercise its powers, after applying its judicial mind, and in order to meet the ends of justice, and that too, for strong and valid reasons. The provision is cast in widest possible terms which is evident from the expressions used in the section i.e. ‘any Court’ ‘at any stage’ of ‘any inquiry or trial or other proceedings’ may summon and/or recall and re-examine ‘any person’.¹

4. In Ratanlal v. Prahlad Jat², the Supreme Court has observed as under:-

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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.

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¹ Manju Devi v. State of Rajasthan, (2019) 6 SCC 203

² (2017) 9 SCC 340



5. As noted above, the respondents in their defence, examined Mr. *Praveen Kumar Tripathi*, accused No.2 in the complaint as DW-1. He deposed that he was the sole proprietor of *M/s India Sewing Machine Company*. He stated that neither any purchase order nor any transaction was carried out with the complainant at any point in time. It was further stated that the subject cheque was neither drawn by him nor did he sign it or fill the contents. It was the specific defence of the respondents that there was no legally enforceable debt and in this regard, reference was made to the FIR registered by the petitioner against one of their employees namely *Mr. Ranveer Singh*. Even in the investigation w.r.t the said FIR, the witness DW-1 was called, wherein he gave a statement that he had no business transaction with the petitioner and that the subject cheque was also not issued by him. Even the said employee of the petitioner namely *Mr. Ranveer Singh* has also stated in the said investigation that the respondents had not transacted with the complainant.

Pertinently, the respondents have taken the said defence right from the inception of the present case at the time of framing of notice to the stage of examination.

6. By way of the Section 311 Cr.P.C. application, the respondents first seek to call for examination one *Jagdeep Singh*, the complainant in the abovementioned FIR. The other witness is the concerned police officer of PS Division-8, Ludhiana. In order to dispute the signature statedly put on the subject cheque, the respondents seek to examine two more witnesses i.e. an official from their bank as well as an expert who may conduct verification of the signature on the subject cheque. The last witness sought to be summoned



is the concerned official from the delivery agency, through which the petitioner has claimed to have delivered the goods.

7. In the considered opinion of the Court, the application filed by the applicant though delayed, relates to the defence raised by him right from the time he has appeared in the trial. The trial court has already compensated the petitioner by burdening the respondent with cost of Rs. 20,000/-.

8. In view of the aforesaid discussion, this Court is of the considered opinion that the trial court has come to allow the said application after due consideration of the facts and circumstances of the case. Consequently, I find no grounds to interfere with the impugned order. The petition along with pending application is accordingly dismissed.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 14, 2024/rd