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

+ **CRL.M.C. 5935/2024**

PANKAJ KUMAR JHA

.....Petitioner

Through: Mr. Ankit Rai and Mr.
Juned Ansari, Advs.
(through VC)

versus

AMAN

.....Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

02.08.2024

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CRL.M.A. 22691/2024 (for exemption)

1. Exemptions allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 5935/2024 & CRL.M.A. 22690/2024 (for stay)

3. The present petition is filed challenging the order dated 09.07.2024 passed by the learned Principal District and Sessions Judge ('PDSJ'), Rohini Courts, Delhi in CR No. 179/2024, thereby dismissing the challenge of the petitioner to the order dated 16.04.2024.
4. The order dated 16.04.2024 was passed by the learned Metropolitan Magistrate (NI) ('MM'), Rohini Courts, Delhi pursuant to which the application filed by the respondent under Section 311 of the Code of Criminal Procedure, 1973 ('CrPC') was allowed and the witness, Sukhbir Singh was allowed to be examined.
5. The dispute arises out of the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act,



1881 ('NI Act'), alleging that a cheque for a sum of ₹5,23,000/- was given by the respondent and was dishonoured when presented.

6. The learned counsel for the petitioner submits that the complaint was at the stage of final arguments when the present application was allowed. He submits that the statement of the respondent under Section 313 of the CrPC was also recorded.

7. He submits that the respondent has admitted his signatures on the cheque and, in such circumstances, the accused could not have been allowed to fill the lacunas in the case at such belated stage.

8. The learned MM noted that no reason has been given for filing the application at such belated stage, however, held that the examination of the witness which is now sought to be examined, is important and is in the interest of justice.

9. The learned PDSJ also noted that both parties admit that the transaction between them took place in the presence of the witness, Sukhbir Singh. It was also noted that the petitioner himself had cited Sukhbir Singh as one of the prosecution witnesses and had later not examined him.

10. It is trite law that the Court can summon a person at any stage of the trial if the evidence of such a person is essential for the just decision of the case. The Hon'ble Apex Court in *Natasha Singh v. CBI : (2013) 5 SCC 741* while observing that the power to summon or recall witnesses can be exercised at any stage of trial observed as under:

“8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at “any stage” of “any enquiry”, or “trial”, or “any other proceedings” under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his



evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case.

15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred 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 great caution and circumspection. The very use of words such as “any court”, “at any stage”, or “or any enquiry, trial or other proceedings”, “any person” and “any such person” clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness



is in fact, essential to the just decision of the case.”

(emphasis supplied)

11. Similarly, the Hon’ble Apex Court in ***Ratanlal v. Prahlad Jat and Others*** : (2017) 9 SCC 340 observed 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.”

(emphasis supplied)

12. I find no infirmity in the impugned order.

13. The petitioner had filed the complaint under Section 138 of the NI Act alleging that he had extended the loan to the respondent, and the respondent in discharge of the amount advanced, had issued the cheque. It is an undisputed position that the transaction between the petitioner and the respondent herein took place in the presence of Sukhbir Singh. The evidence of Sukhbir Singh is admittedly important and he was, therefore, cited as a witness by the petitioner himself. No reason has been mentioned as to why the witness was dropped at a subsequent stage.

14. The learned MM rightly noted that even though the application is filed at a belated stage, however, the importance of



the examination of the witness cannot be doubted. The learned MM, therefore, imposed a cost and allowed the examination of the witness.

15. In view of the above, I find no merit in the present petition and the same is, therefore, dismissed.

16. The learned MM is directed to conduct the examination of the witness as expeditiously as possible.

AMIT MAHAJAN, J

AUGUST 2, 2024

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