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**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

CRM-M-3945-2025

Date of Decision: 27.01.2025

AMRITPAL SINGH**.....PETITIONER****VERSUS****RAHUL AHUJA****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Rupa Pathania, Advocate
for the petitioner.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 528 BNSS, 2023 for setting aside of order dated 20.12.2024(Annexure P-1) passed by JMIC, Ludhiana in complaint dated 17.01.2019 bearing COMA No. 2589-2014 titled as 'Rahul Ahuja vs Amritpal Singh' whereby the application filed by the petitioner for recalling CW-1 u/s 348 BNSS, 2023(earlier Section 311 Cr.P.C) has been dismissed..

2. Factual matrix of the case unfolds that a deal of property bearing house no.35-D,Sarabha Nagar,Ludhiana was struck in between the respondent(complainant) and the petitioner(accused) for a total sum of Rs. 9,25,00,000/- and in regard to that two different agreements to sell dated 1.11.2013 were executed and reduced into writing between the respondent and the complainant and other one between M/s Kovalam Investment and Trading Co.Ltd (finance arrangement of the petitioner) and the complainant



wherein first agreement to sell was executed wherein the petitioner paid 1,25,00,000/- to the complainant and another agreement was also executed wherein the complainant paid a sum of Rs. 4 crore to the M/s Kovalam Investments and Trading Co. as per the agreements. The accused as part of the terms and conditions of the agreement to sell, as a security for the performance of the agreement to sell issued one cheque bearing no. 031549 dated 16.12.2013 and it was also specifically undertaken by the complainant that in case of non-execution of the sale deed for any reason, the complainant will handover both the original agreements along with the benefits. However, the complainant after taking the possession of the said property from the petitioner and despite making the payment of Rs. 91,61,833 /- to the petitioner has made the payment to M/s Kovalam Investment and Trading Co.Ltd in connivance with each other with their mala fide intention to cause wrongful loss to the petitioner. Further, the complainant transferred an amount of Rs.2 Crore in the account of Sumesh Chadha bearing A/c No. 00341600002924 on 20.03.2014 through RTGS and from the account of Sumesh Chadha, one demand draft bearing no.007023 of an amount of Rs. 1,80,18,000/- was issued at the name of M/s Kovalam Investment and Trading Co. Ltd and the remaining amount of Rs. 18,00,000/- was withdrawn in cash and from the said amount, the complainant purchased the stamp paper in collusion with each other and got executed the sale deed by showing Sumesh Chadha as the real purchaser in the said deed.

3. Counsel for the petitioner contends that petitioner has been falsely roped into the complaint under section 138 of Negotiable Instruments



Act 1881(Annexure P-3) by the complainant-respondent in connivance with one Sumesh Chadha-DW5 wherein the respondent with mala fide intention presented the cheque that had been given to him by the petitioner as a security cheque at the time of execution of Agreement to Sell dated 01.11.2013 which got dishonored.

4. He further contends that the need to file an application has arisen because the bank details of the respondent clearly shows that a conspiracy was hatched between Respondent and Sumesh Chadha but since these documents were not in possession of the petitioner at the time of cross examination of the respondent so the same could not be proved.

5. He vehemently argues that certain glaring facts that became clear from the evidence of the defence witnesses and the record procured by them were earlier not available during the cross examination of the respondent which the trial court has failed to acknowledge while dismissing the application under section 348 of BNSS, 2023.

6. Heard learned counsel for the petitioner at length.

7. The present revision pertains to grievance of the petitioner against the impugned order dated 20.12.2024 passed by the trial court dismissing the application under section 348, BNSS, 2023 wherein the petitioner has not been granted one last opportunity to cross examine CW-1 Rahul Ahuja on account of popping up of the new facts in this matter.

8. Before delving into the merits of the case, it would be apposite to discuss section 348 BNSS,2023 which is reproduced herein below:-

348. Power to summon material witness, or examine person present.



Any Court may, at any stage of any inquiry, trial or other proceeding under this Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

9. Perusal of the abovementioned section makes it amply clear this section only allows recalling and re-examination of a witness already examined wherein the court thinks it fit to be essential for just decision of the case.

10. Further, the Apex Court in ***“Vijay Kumar vs State of U.P. & Anr, 2011 (8) SCC 136”*** has held that :-

“though Section 311 confers vast discretion upon the court and is expressed in the 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 the code 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”

11. An application under section 348 BNSS, 2023/311 Cr.P.C 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 . What is required to be seen is the essentiality of the evidence sought to be brought on record. In the instant case, the petitioner has averred that the complainant has filed false complaint under section 138 of the



Negotiable Instruments Act 1881 wherein during examination of witness DW-5, certain new facts has come forth in the knowledge of the petitioner for which it is extremely important to examine CW-1 Rahul Ahuja again.

12. The court after perusing the record in hand is of the clear view that once the case was fixed for defence evidence wherein the petitioner was given ample opportunity to examine the witness, by no stretch of imagination the court can now allow to reopen the trial after 10 years where the trial has reached to its fag end and reopening the trial would certainly prejudice fair trial as the petitioner would get an opportunity to fill up the lacunas. Therefore, going by the essentiality test, it can be clearly seen that the reasons mentioned in the application under section 348 BNSS, 2023 is only an after thought to fill the lacuna in its defense story which the court does not deem fit to allow.

13. Taking into consideration the above stated facts, I do not find considerable merit in the present petition and therefore, the same is dismissed and the order passed by JMIC, Ludhiana dated 20.12.2024 (Annexure P-1) is hereby upheld qua the petitioner.

14. It is made clear that the Trial court shall proceed with the trial in accordance with the law and conclude the same as expeditiously as possible.

15. Accordingly ordered.

27.01.2025
anuradha

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No