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

CRM-M-5431-2025

Date of decision: 30.01.2025

Manjinder Singh

....Petitioner

Versus

HDFC Bank Limited

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Ms. Himani Kapila, Advocate
for the petitioner.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 for setting aside the impugned order dated 19.12.2024 (Annexure P-4) passed by the learned Judicial Magistrate 1st Class, Batala, District Gurdaspur, whereby, an application under Section 311 of Cr.P.C. filed by the petitioner for permission to re-call CW-2 Ankush Sharma, has been dismissed.

2. The brief facts of the case are that the respondent filed a complaint (Annexure P-1) under Section 138 of Negotiable Instruments Act, 1881 (in short 'the Act') against the petitioner on account of dishonor of cheque No. 000002 dated 27.06.2022 amounting to Rs.15,00,000/-. The case set up by the respondent in the complaint would show that the petitioner had availed financial assistance in the shape of agriculture limit loan along with agreed interest from the respondent-Bank and executed loan documents and the petitioner agreed to repay the same on agreed terms and conditions. The petitioner had issued a cheque in discharge of his aforesaid liability. The legal



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notice dated 14.07.2022 was served upon the petitioner and 15 days' time was given to him to pay the dues but he failed to pay the same and thereafter, the complaint under Section 138 of the Act was filed and the petitioner was summoned by the learned trial Court.

3. The learned counsel for the petitioner *inter alia* contends that the petitioner appeared before the learned trial Court and he was admitted to bail. She further submits that CW-2 Ankush Sharma has been examined by the respondent and cross examined by counsel for the petitioner, however, certain material questions were remained to put to CW2 while conducting his cross-examination by the previous counsel. The petitioner came to know about this fact when he engaged a new counsel.

4. Learned counsel for the petitioner submits that in light of the said revelation and the subsequent event, the petitioner filed an application under Section 311 Cr.P.C for recalling the witness CW-2 for further cross-examination. The learned trial Court has dismissed the application of the petitioner against the settled law vide impugned order.

5. Having heard the learned counsel for the petitioner and after perusing the record, this Court finds no ground to interfere with the impugned order dated 19.12.2024 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Batala, District Gurdaspur.

6. The power under Section 311 Cr.P.C. can be exercised for summoning of witnesses at any stage of any inquiry, trial or other proceeding under this Code and the Court may 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. The Court can summon and



examine or recall and re-examine any such person if his evidence appears to it to be essential to the just adjudication of the case. The Court is required to form an opinion whether such evidence is necessary for a just and proper decision in that case.

7. The learned Court below has concluded that sufficient opportunities were provided to the accused/petitioner to cross-examine CW2 Ankush Sharma and to address all relevant questions concerning documents such as the statement of account, loan agreement, etc., which had already been relied upon by the witness. The Court further held that merely because certain material questions were not posed to the witness or due to a change in counsel, there was no valid ground to recall the witness for further cross-examination.

8. A two judge Bench of the Hon'ble Supreme Court in ***VN Patil Vs. K. Niranjana in Criminal Appeal No. 267 of 2021*** decided on 04.03.2021 examined the scope of the power under Section 311 of Cr.P.C and following was observed:-

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 significant expression that occurs is ‘at any stage of enquiry or trial or other proceeding under this Code’. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion.”



9. The Hon'ble Supreme Court in *Mohanlal Shamji Soni vs. Union of India and another*, AIR 1991 SC 1346 has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

10. Furthermore, unsatisfactory questioning on the part of the counsel for the petitioner during the cross-examination of CW-2 cannot be the sole criterion for invoking the provisions of Section 311 of Cr.P.C. Reliance in this regard can be placed on the judgment of the Hon'ble Supreme Court rendered in '*Rajaram Prasad Yadav Vs. State of Bihar and another*' 2013 AIR (SC) (Crl.) 1746, wherein, certain principles that must be borne in mind while dealing with an application under Section 311 of Cr.P.C. were laid down. These principles as follows:-

"23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:



- a) 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?*
- b) The exercise of the widest discretionary power under Section [311](#) Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) 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.*
- d) The exercise of power under Section 311 Criminal Procedure Code 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.*
- e) 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.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) 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.*
- h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) 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.*
- j) Exigency of the situation, fair play and good sense should be the safe guard, 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.*



k) 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.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) 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.

n) The power under Section 311 Criminal Procedure Code 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.”

11. The Division Bench of this Court in ***Sukhdev Singh vs. State of Punjab, 1982 Cr. LJ 2201*** has held that:-

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be



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prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added)."

12. Keeping in view the above discussion, this Court finds the learned Court below has correctly adverted to the factual matrix in the light of the provision of Section 311 of Cr.P.C. The necessary ingredients for invoking the power under Section 311 of Cr.P.C. are completely missing. Hence, this Court finds no merit in the present petition and, as such, the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

30.01.2025*Neha*

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