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

CRM-M-5381-2025

Date of decision: 30.01.2025

Varun Bhandari

....Petitioner

Versus

Chhavi Bhandari Vasuja

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Manoj Kumar Sood, Advocate
for the petitioner.**HARPREET SINGH BRAR, J. (ORAL)**

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 08.01.2025 (Annexure P-5) in NACT-60344-2022, whereby, an application under Section 311 of Cr.P.C. for placing on record relinquish deed No.4168 dated 07.06.2021 and 4169 dated 07.06.2021, sale deed No.8923 dated 26.07.2022 and police complaint filed before the Delhi Police was allowed by the learned Judicial Magistrate 1st Class, Faridabad.

Brief facts of the case are that the complaint (*supra*) has been filed by the complainant/respondent under Sections 138/142 of the Negotiable Instruments Act (in short 'the Act') against the petitioner. The respondent had share in the residential house No.100 & 101, Sector 11, Rohini, Delhi and petitioner agreed to purchase the share of the complainant/respondent for a sum



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of Rs.75,00,000/-. The complainant/respondent went to the office of Sub-Registrar, Rohini and signed the sale deed in the presence of the witnesses. Thereafter, the petitioner had issued two cheques bearing Nos.416598 & 416596 total amounting to Rs.8,00,000/- on 22.07.2022 against the sale deed but the same were dishonoured on presentation in the bank for encashment and thus, the instant case.

Learned counsel for the petitioner *inter alia* contends that after the preliminary evidence, the petitioner was summoned and the plea of defence under Section 263(g) of the Cr.P.C. was recorded. The petitioner admitted his signatures on the cheque but stated that the cheques were issued in lieu of security. He further submits that thereafter, the petitioner filed an application under Section 145(2) of the Cr.P.C. to cross-examine the respondent and the respondent was cross-examined on 22.05.2024. In response, the respondent filed an application under Section 311 of the Cr.P.C. for placing on record the relinquishment deeds mentioned in paragraph 3 of the petition and the same was wrongly allowed by the learned trial Court since the respondent while filing the complaint mentioned about the sale deed yet did not produce the same at the time of the institution of the complaint. All the documents which were allowed to be produced on record after the passing of the impugned order were in the knowledge of the respondent at the time of the filing of the complaint as she was the executant of the said documents. Further, all the documents existed prior to the institution of the complaint and the application under Section 311 of Cr.P.C. is merely an attempt to fill up lacuna in the case of the respondent which is prejudicial to the petitioner.



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Having heard learned counsel for the petitioner and after perusing the records, it transpires that the relinquishment deeds bearing No.4168 dated 07.06.2021 and No.4169 dated 07.06.2021, and sale deed bearing No.8923 dated 26.07.2022 are essential and material for the just and proper adjudication of the trial. The evidence which is being sought to be produced on record, would be necessary for deciding the controversy effectively. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court passed in 'Varsha Garg Vs. The State of Madhya Pradesh and others' Cr. Appeal No. 1021 of 2022 and the judgment of this Court passed in 'Vinod Kumar Vs. State of Haryana and others' CRR No.377 of 2020.

A two judge Bench of the Hon'ble Supreme Court in **V. N. Patil vs. K. Niranjana** 2021(2) R.C.R.(Criminal) 310, examined the scope of the power under Section 311 of Cr.P.C and speaking through Justice Ajay Rastogi, the 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.”

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.

A Division Bench of this Court in ***Sukhdev Singh vs. State of Punjab*** 1982 Cr. LJ 2201 has held as under:

“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 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".

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. and thus, 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