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

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CRM-M-11344-2025 (O&M)
Date of decision: 28.02.2025

Tarun Kumar**...Petitioner**

Versus

Rajesh**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Gaurav Vir Singh Behal, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short 'BNSS'*) making prayer for quashing the order dated 18.12.2024 (Annexure P-9), passed by the Court of learned Judicial Magistrate First Class, Rohtak in complaint bearing COMA No. 1046 of 2018, titled as ***Rajesh vs. Tarun***, filed under Section 138 of the Negotiable Instruments Act, 1881 (*for short 'N. I. Act'*), whereby an application filed by the petitioner/accused under Section 311 of the Code of Criminal Procedure (*for short 'the Code'*) had been dismissed.

2. Briefly stated, the relevant facts of the case are that the aforesaid complaint has been filed by the respondent under Section 138 of the N. I. Act on the allegations that the petitioner had purchased a car from the respondent for a sale consideration of Rs. 5,70,000/-. An amount of Rs. 1,45,000/- was paid by the petitioner and rest of the amount i.e.

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Rs. 4,25,000/- was to be paid by him by raising a loan from the bank. In order to discharge his liability, the petitioner had issued a cheque for an amount of Rs. 3,70,000/- on 12.01.2018 but on presentation of the same before the banker of the respondent, the same was dishonoured with the remarks 'funds insufficient'. The petitioner failed to pay the amount due against him even after receipt of legal notice from the respondent, thereby compelling the respondent to file the aforesaid complaint. Process has been issued against the petitioner and he is facing trial before the learned trial Court.

3. The petitioner had moved an application under Section 311 of the Code for re-examination of the respondent/complainant. After taking reply on this application and hearing the arguments, the learned Magistrate had dismissed this application by observing that the petitioner had availed sufficient opportunities to conclude his evidence and had already cross-examined the respondent/complainant at length. Feeling aggrieved, the petitioner has filed the present petition.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court ignored the fact the cross-examination of the respondent was incomplete due to inadvertence of his counsel as the questions with regard to issuance of cheque, being signatory of the cheque, the exact place of issuance of the cheque and the name of the witness could not be put to the respondent. It is further argued that there are as many as ten questions, as detailed in paragraph No. 14 of the petition, which are to be

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asked from the respondent/complainant. It is submitted that re-examination of the respondent is necessary for just and proper decision of the case. A perusal of the impugned order would show that no specific reasoning had been given by the learned trial Court for dismissing the application. A totally non-speaking and cryptic order had been passed. It is well settled law that there is no bar in case any person is called for re-examination. It is, thus, urged that the present petition deserves to be allowed and the impugned order is liable to be quashed. To fortify his arguments, learned counsel for the petitioner has relied upon judgments passed by the co-ordinate Bench of this Court in ***Kusum Ayar vs. Satish Kumar : 2022 (2) NIJ 304*** and order dated 06.03.2024 passed in ***CRM-M-11849-2024***, titled as ***Foremost Dairies Private Ltd. and another vs. Mohammad Yaseen*** as well as upon order dated 24.07.2024 passed by this Court in ***CRM-M-31460-2024***, titled as ***Gursewak Singh Cheema vs. Satnam Singh*** to submit that a party cannot be allowed to suffer due to negligence or omission on the part of his counsel.

5. I have heard learned counsel for the petitioner at considerable length and have also perused the material placed on record.

6. The copies of the impugned order and the application filed by the petitioner seeking production of additional evidence have been perused and on due appraisal of the same, I am of the considered opinion that the impugned order does not warrant any interference for the reason to be given in the coming paragraphs.

7. The learned trial Court, while dismissing the aforesaid application, has specifically observed that the petitioner had already availed

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sufficient opportunities to conclude his evidence and had cross-examined the respondent/complainant at length. The petitioner had moved this application at the stage when his statement under Section 313 of the Code had been recorded. The petitioner had failed to establish as to how re-examination of the respondent was going to the root of the dispute and was essential for just and proper decision of the case. Learned counsel for the petitioner has failed to say anything to the contrary. The only plea taken by the petitioner for re-examination of the petitioner is that his counsel had not properly cross-examined him as certain question were left to be asked from him. However, a perusal of the application (Annexure P-8) shows that there is no mention as to what questions were proposed to be put before the respondent. On the contrary, while filing this petition, the petitioner has taken a specific stand by posing as many as ten questions as proposed questions, which are mentioned in paragraph No. 14 of this petition. This clearly shows that the petitioner has improved his version and is trying to fill up the lacuna. So far as the authorities as relied upon by the petitioner are concerned, the same are distinguishable on the basis of the facts and circumstances as in those cases, the counsel had either failed to put any question with regard to some material fact or had been won over by the opposite party but in the present case, it is not so, as the respondent-complainant had been cross-examined at length and the petitioner had been afforded sufficient opportunities to lead his evidence.

8. It is well settled proposition of law that an application under section 311 of the Code must not be allowed only to fill up lacunas in the

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case of the prosecution, or of the defence or to give an unfair advantage to the opposite party. *In Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (2) Scale 654*, Hon'ble Supreme Court has held that the power conferred under Section 311 of the Code should be invoked by the court only to meet the ends of justice and for strong and valid reasons and it should be exercised with great caution and circumspection. Though, Section 311 of the Code 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. The provisions of this section should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 of the Code has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Reference in this context can be made to *Vijay Kumar vs. State of U. P. : (2011) 8 SCC 136* as well as to the judgments rendered by this Court in *Bhag Singh vs. Madan Lal Walia : 1998 (3) Civil Court Cases 597(1)(P&H)* and *Joginder Singh vs. Devinder Kumar : 1999(1) Civil Court Cases 202(P&H)*.

9. In view of the discussion as made above, I do not find any illegality or infirmity in the impugned order warranting interference by this Court. Hence, the present petition is dismissed.

28.02.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No