



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

CRM-M-13669-2025

Date of decision: 12.03.2025

M/S SHINGAR JEWELLERS

...PETITIONER

V/S

CHARANJIT SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Jasmine, Advocate for
 Mr. Prateek Sodhi, Advocate for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 BNSS, 2023 for quashing/setting aside the order dated 07.02.2025, whereby evidence of petitioner has been closed (Annexure P-4) and order dated 04.03.2025, whereby application filed by the petitioner under Section 311 Cr.P.C. has been dismissed (Annexure P-6), both passed by learned Judicial Magistrate Ist Class, Amritsar in case stemming from a complaint case filed under Section 138 of Negotiable Instruments Act, 1881.

2. Learned counsel for the petitioner *inter alia* contends that without there being any justifiable cause or fault on the part of the petitioner, the evidence of the petitioner was closed by impugned order. She further contends that it is a matter of record that despite issuance of summons and non-bailable warrants, witness of the Excise and Taxation Department did not appear. Thereafter, the evidence of the petitioner was closed by order. She submits that the petitioner has duly served the witness through *dasti* process and also deposited the diet money. As such, in the aforesaid circumstances, it was



incumbent upon learned trial Court to adopt coercive methods to ensure the presence of aforesaid witness. However, without taking note of this aspect, the learned trial Court proceeded to close evidence of the petitioner, vide impugned order dated 07.02.2025. The petitioner, upon getting knowledge of the said order, preferred an application under Section 311 Cr.P.C. read with Section 348 BNSS, 2023 seeking permission to examine the proprietor of the petitioner's firm. Learned counsel refers to the application (Annexure P-5) and submits that it is clearly indicated therein that without there being any fault attributable to the petitioner, the summoned witness did not turn up. Further, on most of the dates of hearing, the petitioner being the complainant had remained present before learned trial Court. However, on one occasion, the proprietor of the petitioner's firm being under *bona fide* belief that summoned witness ought to be examined first, did not get himself examined. Additionally, the petitioner has been diligently pursuing the complaint, besides taking requisite steps to ensure the presence of summoned witnesses and in case, the impugned order is allowed to be sustained, it will cause great prejudice and incurable loss to the petitioner.

3. Upon advance notice, Mr. Sumeet Singh Brar, Advocate has put in appearance on behalf of the respondent and filed his *vakalatnama* which is taken on record. Registry is directed to tag the same at the appropriate place. *Per contra*, learned counsel opposes the prayer made by the petitioner on the ground that the petitioner has approached this Court by way of filing a petition under Section 528 BNSS, 2023 whereas, the petitioner was required to have challenged the impugned orders by filing a revision before learned Sessions Court. He further submits that the case was fixed for evidence of the



complainant since 18.08.2021 and the petitioner has availed several opportunities to conclude its evidence but he has failed to do so. As such, the learned trial Court has rightly closed the evidence of the petitioner.

4. Having heard learned counsel for the parties and after perusing the records, the present petition is being decided in *limine* and the case is taken up for final disposal with the consent of learned counsel for both the parties. This Court finds force in the arguments advanced by learned counsel for the petitioner and the objection of learned counsel for the respondent with regard to filing of revision against the impugned order is required to be rejected in view of the judgment passed by Hon'ble Supreme Court in ***Sethuraman vs. Rajamanickam 2009 (5) SCC (153)***, in which, it has been categorically held that revision against an order passed under Section 311 Cr.P.C. is not maintainable. Para 4 of the said judgment is relevant for our consideration, which states as follows: -

“Secondly, what was not realised was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Criminal Procedure Code, were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Criminal Procedure Code. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Criminal Procedure Code for production of documents and other on the application under Section 311 Criminal Procedure Code for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under



such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

Further, nobody should be stopped from adducing the best evidence and the testimony of proprietor of petitioner/complainant's firm, namely, Lakhbir Singh 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 2022 (4) R.C.R(Criminal)***.

5. The principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India and any denial of the best available evidence or opportunity of effective and substantial hearing to accused in proving his defence would amount to denial of free and fair trial.

6. A two judge Bench of the Hon'ble Supreme Court in **'VN Patil Vs. K. Niranjan'** 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.”



Further still, a two Judge bench of the Hon'ble Supreme Court In ***Rajaram Prasad Yadav Versus State of Bihar & another, 2013(3) R.C.R. (Criminal) 726***, speaking through Justice Fakkir Mohamed Ibrahim Kalifulla, the following was opined:

“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. 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.”*



7. Additionally, a two Judge bench of the Hon'ble Supreme Court in ***Mohanlal Shamiji Soni Versus Union of India & another, 1991(3) R.C.R.(Criminal) 182***, speaking through Justice S. Ratnavel Pandian, the following was held:

“27. The principle of law that 'emerges from the views expressed by this court in the above decisions is that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.’ (emphasis supplied)

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

“4. ...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 ex imporviso 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 an 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".

8. In view of the above, present petition is allowed and impugned orders dated 07.02.2025 (Annexure P-4) and 04.03.2025 (Annexure P-6) are hereby set aside, subject to depositing cost of Rs.5,000/- in District Legal Services Authority, Amritsar, within a period of two weeks and the learned trial Court is directed to summon the prosecution witness i.e. proprietor of complainant/petitioner firm i.e. Lakhbir Singh and grant the petitioner two effective opportunities to conclude the evidence.

March 12, 2025
Manisha

(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |