



CRM-M-25981-2025

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

CRM-M-25981-2025 (O&M)
Decided on : 14.05.2025

Pawan Kumar

..... Petitioner

Versus

Ombir Balhara

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Nitin Sansanwal, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the impugned order dated 11.04.2025 (Annexure P-7) passed by learned Sub Divisional Judicial Magistrate, Gohana in a complaint under Section 138 of the Negotiable Instruments Act, 1881 i.e. COMA/298/2018 dated 29.08.2018, Police Station Gohana, District Sonipat, whereby, application dated 17.03.2025 filed by the petitioner-complainant under Section 311 Cr.P.C. was dismissed vide order dated 11.04.2025.

2. As per the facts of the case, the petitioner filed a complaint under Section 138/142 of the Negotiable Instruments Act, 1881 against the respondent. The complaint filed is pending adjudication. During the course of trial, the petitioner filed an application under Section 311 Cr.P.C. for voice sampling by appointing voice expert and specimen writing. It was further prayed in the application that Rohit son of Pawan be also directed to give evidence of the audio recording and statement of account for the years 2015, 2016 and 2017 be also placed on record. However, after hearing both the sides, learned trial Court dismissed the application vide impugned order dated 11.04.2025. Aggrieved by the same the petitioner is before this Court



by way of filing the present petition.

3. It has been vehemently contended by learned counsel for the petitioner that the impugned order being unsustainable in the eyes of law, deserves to be set aside. He submits that the petitioner examined In-charge of the Police Station as CW-2, who produced documents marked as Mark CA and Mark CB. He submits that after closing of evidence of the complainant, statement of the respondent-accused was recorded under Section 313 Cr.P.C., whereas, he denied all the allegations levelled against him. It is submitted that the documents produced were authored by the respondent, who had acknowledged the existence of the debt and thus, the transcript is a vital piece of evidence. He submits that the petitioner filed second application dated 17.03.2025 under Section 311 Cr.P.C., which has been dismissed vide impugned order dated 11.04.2025. He submits that as per the law settled, while exercising the power under Section 311 Cr.P.C., the Court has to find whether proposed evidence is necessary to be brought on record for the just and proper decision of the case or not. However, learned trial Court has dismissed the application in violation of law settled. He submits that even if the application is filed at a belated stage, the same cannot be a ground for the rejection of the same, if the evidence sought to be brought on record are essential for the just decision of the case. He submits that no prejudice would be caused to the respondent and thus, the impugned order being unsustainable in the eyes of law, deserves to be set aside by allowing the application under Section 311 Cr.P.C.

3. After hearing learned counsel for the petitioner and perusing the record, it is deciphered that the respondent has been prosecuted on the



basis of complaint filed by the petitioner under Section 138/142 of the Negotiable Instruments Act, 1881. Petitioner-complainant filed second application dated 17.03.2025 under Section 311 Cr.P.C. which has been dismissed by learned trial vide order dated 11.04.2025. However, it is inferred from the record of the case that the petitioner earlier filed an application under Section 311 Cr.P.C. before the trial Court, which was allowed vide order dated 12.11.2024 and the petitioner was given opportunity to bring on record four witnesses and their deposition was also recorded. However, again the petitioner filed an application under Section 311 Cr.P.C. for bringing more witnesses on record. If the evidence sought to be brought on record through second application was essential, the same should have been part of the first application itself. However, the petitioner did not mention anything about the same.

4. There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For resolving the controversy, appreciation of provisions of Section 311 Cr.P.C. are relevant, which read as under:-

“311. Power to summon material witnesses, or examine person present- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, 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; and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.”

5. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any

such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328** held as under:-

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

6. There is no dispute regarding the law settled by Hon’ble Supreme Court time and again that the power granted under Section 311 Cr.P.C. should be exercised in a liberal manner, if the Court finds that evidence of the witness sought to be examined is essential for just decision of the case.

7. Thus, this Court does not find any infirmity in the impugned order passed and hence, the present petition being devoid of any merit, is hereby dismissed.

14.05.2025

sharmila

(RAJESH BHARDWAJ)

JUDGE

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No