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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.1504 of 2025
Date of decision : 03.07.2025

Rainbow Human Care Private Limited, Chandigarh
..... Petitioner

Versus

M/s Mesova Pharmaceuticals, Delhi and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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Present: Mr. Ullas Kapoor, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

1. Present revision petition has been filed by the petitioner praying for impugning order dated 06.03.2025 passed by the learned Judicial Magistrate Ist Class, Chandigarh whereby the application filed by the petitioner under Section 348 of BNSS, 2023 (Section 311 Cr.P.C.) praying for permission to summon the official concerned from the Income Tax Department along with the income tax returns and balance sheets for the assessment years 2017-18 and 2018-19 was dismissed.

2. Learned counsel for the petitioner has vehemently contended that the petitioner has filed a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act against the respondent. He has submitted that the respondent was a regular

purchaser of medicines from the petitioner on credit basis and the petitioner supplied medicines to the respondent amounting to Rs.14,14,525/- and the invoices were duly raised. To discharge the legally enforceable debt and liability, the respondent issued the cheques, which on presentation were dishonored with the endorsement "Insufficient Funds". Hence the petitioner prosecuted the respondent by filing a complaint under Section 138 of Negotiable Instruments Act. He has submitted that the petitioner's counsel during the cross examination of the complainant's witness, noticed that the respondent had made a request for production of the petitioner's Income Tax Returns for the assessment years 2017-18 and 2018-19. However during the proceedings, only the Income Tax Return (for short 'ITR') for the year 2017-18 was produced and the ITR for 2018-19 inadvertently remained not produced. He has submitted that the production of the ITR for the year 2018-19 along with the corresponding balance sheet was crucial and relevant for the just adjudication of the case. Hence, the petitioner filed an application for summoning these ITRs along with the concerned officials of Income Tax Department, however the same was illegally declined by the learned trial Court vide order dated 06.03.2025. He has submitted that the technicalities cannot over-ride the demand to substantive justice. However the learned trial Court failed to appreciate the same and thus the impugned order is unsustainable in the eyes of law. He has thus submitted that the impugned order be set aside and the application filed by the petitioner praying for summoning the official concerned from the Income Tax Department along with the ITR and balance sheet be allowed.

3. The Court has heard learned counsel for the petitioner and perused the record with his able assistance.

4. Admittedly, the petitioner is the complainant, who has filed the complaint under Section 138 read with Section 142 of the Negotiable Instruments Act. It is evident from the record that both the sides had led their evidences and the case is fixed for final arguments. It is at this stage, the petitioner-complainant had filed the present petition. The record reveals that CW-1 was thoroughly cross-examined on 11.10.2023 and on closing of the evidence by the complainant, the statement of the accused was recorded under Section 313 Cr.P.C. Thereafter, the defense had also closed his evidence. The stage of filing of the application under Section 348 of BNSS (Section 311 Cr.P.C.) is also relevant for consideration of the petition filed.

5. However, in view of the law settled, it is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C (Section 348 of BNSS) should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Section 348 of BNSS (Section 311 Cr.P.C) is reproduced hereunder:-

> ***"348. Power to summon material witness, 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 re- examine any such person if his evidence appears to it to be essential to the just decision of the case."*

7. From the bare reading of the provision of Section 348 of BNSS (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 for the just decision of the case. Reliance in this regard can be placed in case of ***Swapan Kumar Chatterjee Vs. Central Bureau of Investigation*** 2019(14) SCC 328, wherein it has been held as under:-

> *"12. 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 re-examination 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."*

8. Weighing the facts and circumstances of the case and the law settled, this Court finds no infirmity in the impugned order passed by the learned Judicial Magistrate Ist Class, Chandigarh dated 06.03.2025 and thus the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

03.07.2025
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No