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

**CRM-M No.29777 of 2025
Date of Decision: 28.05.2025**

Vinod Kumar

..... Petitioner

Versus

Sombir

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Japjit Singh Johal, Legal Aid Counsel
for the petitioner.

RAJESH BHARDWAJ, J. (ORAL)

1. Present petition has been filed praying for setting aside/quashing the impugned order dated 24.02.2025 (Annexure P-11) passed by the learned Judicial Magistrate First Class, Bahadurgarh (in criminal complaint trial, i.e. Sombir vs. Vinod Kumar' bearing CIS No.COMA No.870 of 2019, CNR No.HRJRA-1004003-2019, date of registration 23.10.2019, whereby application dated 29.01.2025 (Annexure P-9) moved by the petitioner for summoning the concerned oath commissioner along with his record and receipt has been dismissed and further for allowing the application dated 29.01.2025 and for directing the learned trial Court to summon the oath commissioner along with his record and receipt. Further prayer has been made for setting aside the order dated 05.04.2025 passed by the learned Additional



Sessions Judge, Jhajjar, whereby the revision petition bearing CIS No.CRR-25-2025 filed by the petitioner against the abovesaid order dated 24.02.2025 passed by the learned Judicial Magistrate First Class, Bahadurgarh has been dismissed and for staying the proceedings pending before the learned trial Court/learned Judicial Magistrate First Class, Bahadurgarh during the pendency of the present petition.

2. Succinctly, the facts of the present case are that the respondent had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short “the Act”) against the petitioner and as per the allegations made, the petitioner had issued a cheque bearing no.022387 dated 15.08.2019 for an amount of Rs.4 lacs drawn on Axis Bank Ltd. in favour of the respondent-complainant for the discharge of his legally enforceable liability towards the respondent-complainant. However, on presentation, the same was dishonored with the remarks “funds insufficient”. Though the respondent issued legal notice to the petitioner but he failed to pay the amount and, thus, the petitioner was liable to be prosecuted. The learned trial Court, on summoning the petitioner, proceeded with the trial. During trial, the complainant produced his evidence including one affidavit. The complainant was examined by the trial Court, who was cross-examined by the petitioner. However, after his cross-examination, the petitioner filed an application under Section 311 Cr.P.C., praying for summoning the Oath Commissioner who had attested the affidavits. The learned trial Court found the application filed by the petitioner being devoid of any merit



and, thus, dismissed the same vide order dated 24.02.2025. Aggrieved against the same, the petitioner filed revision petition, however, the same was been dismissed by the learned Revisional Court and, thus, the order passed by the learned trial Court was upheld. Now, aggrieved against both the orders, the present petition has been filed for setting aside the impugned orders.

4. Learned counsel for the petitioner has vehemently contended that the respondent, in his preliminary evidence, tendered his affidavit Ex.CW1/A and documents Ex.C1 to Ex.C5. He has submitted that the preliminary evidence of the respondent was closed vide order dated 18.12.2019. He submitted that the learned trial Court had illegally summoned the petitioner vide order dated 27.01.2020. He has further submitted that the summoning order was passed while primarily relying upon the affidavit of the respondent Ex.CW1/A. He has submitted that the application under Section 145(2) of the Act was filed for permission to cross-examine the respondent and the same was allowed vide order dated 09.11.2023. When the trial was fixed for defence evidence, the petitioner filed an application for summoning the Oath Commissioner, namely, Amit Kumar who had attested the affidavit of the respondent Ex.CW1/A. He has submitted that the affidavit tendered by the respondent was not correctly stamped and attested as per Rule 5(v) and Rule 7 of Part-B of Volume-IV of Chapter 12-B of the Punjab and Haryana High Court Rules and Orders (for short “the Rules”). He has submitted that both the Courts below have illegally declined the



application filed by the petitioner without appreciating that the affidavit was not stamped as per the Rules. He has submitted that the affidavit is the primary evidence led by the respondent and, thus, the admissibility of the evidence in question is material and hence, examination of the Oath Commissioner was essential for the just decision of the case. While placing reliance upon the cases of '**Zahira Habibullah Sheikh and another vs. State of Gujrat and others**', 2006(2) RCR (Criminal) 448 and '**Vinay Tyagi vs. Irshad Ali @ Deepak and others**', 2013(5) SCC 741, he has submitted that the impugned orders, being unsustainable in the eyes of law, deserve to be set aside.

5. After hearing learned counsel for the petitioner and perusing the record, it is deciphered that the petitioner has been prosecuted by the respondent by way of filing the complaint under Section 138 of the Act. The precise submission made by learned counsel for the petitioner is that the complainant had relied upon his affidavit Ex.CW1/A but the said affidavit was not attested as per the Rules. The learned trial Court and the Revisional Court have duly appreciated the submissions made by learned counsel for the petitioner. This is an admitted fact that the petitioner had duly cross-examined the complainant, however, no question pertaining to authenticity of the affidavit, as alleged, was put by the petitioner to the respondent-complainant in his cross-examination. Thus, it is evident that the petitioner never questioned the authenticity of the affidavit which has been alleged after his cross-examination. Needless to say that the trial under Section 138 of the Act is summary in



nature. For resolving the issue in hand, the provisions of Section 138 of the Act are relevant, which are reproduced here as under:-

138. Dishonour of cheque for insufficiency, etc., of funds in the account.—

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;*
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and*
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.*

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.]



6. 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 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 311 Cr.P.C is reproduced hereunder:-

“311. 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 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:-

“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 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. The judgments relied upon by learned counsel for the petitioner are distinguishable on the facts and circumstances of the present case.

9. Weighing the facts and circumstances of the case and the law settled, this Court finds no infirmity in the impugned orders dated 05.04.2025 and 24.02.2025 passed by the learned Additional Sessions Judge, Jhajjar and by the learned Judicial Magistrate First Class, Bahadurgarh, respectively and thus the present petition being devoid of any merit is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

28.05.2025
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(RAJESH BHARDWAJ)
JUDGE

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