



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

CRM-M-51109-2024

Date of Decision: 21.03.2025

ASHOK KUMAR CHOPRA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Nand Lal Sammi, Advocate and
Mr. Hitesh Kumar Sammi, Advocate
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.
Mr. Amit Dhawan, Advocate for respondent no.2.

SANDEEP MOUDGIL, J

1. Jurisdiction of this court has been invoked under section 528 BNSS, 2023 for quashing of order dated 09.05.2024 passed by JMIC, Jalandhar in case no.CHI-1850-2018,CNR No. PBJL030322992018 vide Annexure P-6 (Impugned Order) whereby the Application u/s 311 Cr.P.C for permission to lead additional evidence and to prove the orders dated 22.01.2016 and 04.11.2015, both passed by Ld. Judge Special (CBI) for Greater Mumbai vide Annexures P-3 and P-4 respectively is dismissed, during the pendency of the trial, which is still pending for 10.10.2024 for defence evidence.

2. Factual matrix of the case unfolds that on 07.06.2018, an FIR bearing No. 107 under section 406,420,465,467,468,471 IPC was registered

with Police Station Division No.4, Police Commissionerate, Jalandhar against the Respondent No.2 namely Naresh Kumar Chopra alleging him of misappropriation of Cash worth Rs.16 lacs, 24 carat Gold weighing 600 gms and an i10 car, which were removed by CBI from the house of the petitioner-complainant and respondent no.2- accused by representing himself to be attorney of the petitioner-complainant, received the said articles from CBI.

3. Counsel for the petitioner contends that on 17.02.2024, the petitioner-complainant filed an application under section 311 Cr.P.C for permission to lead additional evidence and to prove the order dated 22.01.2016 and order dated 04.11.2015 passed by Ld. Special Judge (CBI), for Greater Mumbai.

4. He further contends that the need to file an application has arisen because the bank details of the respondent clearly shows that a conspiracy was hatched between Respondent and Sumesh Chadha but since these documents were not in possession of the petitioner at the time of cross examination of the respondent so the same could not be proved.

5. He vehemently argues that certain glaring facts that became clear from the evidence of the defense witnesses and the record procured by them were earlier not available during the cross examination of the respondent which the trial court has failed to acknowledge while dismissing the application under section 348 of BNSS, 2023.

6. Heard learned counsel for the petitioner at length.

7. The present revision pertains to grievance of the petitioner against the impugned order dated 09.05.2024 passed by the trial court dismissing the application under section 348, BNSS, 2023 wherein the petitioner has not been granted permission to lead additional evidence and to prove the orders

dated 22.01.2016 and 04.11.2015, both passed by Ld. Judge Special (CBI) for Greater Mumbai vide Annexures P-3 and P-4.

8. Before delving into the merits of the case, it would be apposite to discuss section 348 BNSS,2023 which is reproduced herein below:-

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 Sanhita, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or re-call and re-examine any person already examined; and the Court shall summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

9. Perusal of the abovementioned section makes it amply clear that this section only allows recalling and re-examination of a witness already examined wherein the court thinks it fit to be essential for just decision of the case.

10. Further, the Apex Court in ***“Vijay Kumar vs State of U.P. & Anr, 2011 (8) SCC 136”*** has held that :-

“though Section 311 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. Discretionary power should be exercised consistently with the provisions of the code and the principles of criminal law. The discretionary power conferred under section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously”

11. An application under section 348 BNSS, 2023/311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the

defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. What is required to be seen is the essentiality of the evidence sought to be brought on record. In the instant case, the petitioner has averred that the Respondent No.2 namely Naresh Kumar Chopra has misappropriated Cash worth Rs.16 lacs, 24 carat Gold weighing 600 gms and an i10 car, which were removed by CBI from the house of the petitioner-complainant and respondent no.2- accused by representing himself to be attorney of the petitioner-complainant, received the said articles from CBI and the bank details of the respondent clearly shows that a conspiracy was hatched between Respondent and Sumesh Chadha but since these documents were not in possession of the petitioner at the time of cross examination of the respondent so the same could not be proved.

12. The court after perusing the record in hand is of the clear view that once the case was fixed for defence evidence wherein the petitioner was given ample opportunity to examine the witness added with the fact that the evidence which the petitioner intended to produce was well within his knowledge before lodging of the FIR therefore, by no stretch of imagination the court can now allow to prove the orders (Annexures P-3 and P-4) respectively after 10 years where the trial has reached to its fag end and reopening the trial would certainly prejudice fair trial as the petitioner would get an opportunity to fill up the lacunas. Therefore, going by the essentiality test, it can be clearly seen that the reasons mentioned in the application under section 348 BNSS, 2023 is only an after thought to fill the lacuna story which the court does not deem fit to allow.

13. Taking into consideration the above stated facts, I do not find considerable merit in the present petition and therefore, the same is dismissed and the order passed by JMIC, Jalandhar dated 09.05.2024 (Annexure P-6) is hereby upheld qua the petitioner.

14. It is made clear that the Trial court shall proceed with the trial in accordance with the law and conclude the same as expeditiously as possible.

15. Accordingly ordered.

21.03.2025
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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