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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4147/2025**

SANJAY CHOUDHARYPetitioner

Through: Mr. Pushp Saini, Adv.

versus

SANA CHOUDHARYRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **01.07.2025**

CRL.M.A. 18152/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

CRL.M.C. 4147/2025 & CRL.M.A. 18153/2025

3. The present petition is filed against the order dated 24.03.2025 (hereafter '**the impugned order**') passed by the learned Magistrate, West, Tis Hazari Court, Delhi in Ct. Case 9159/2019 thereby dismissing the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, 1973 ('**CrPC**').

4. Briefly stated, the petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 in the year 2019. In the complaint, the petitioner alleged that he had advanced a sum of ₹17,00,000/- to the respondent. It is the case of the petitioner that he had advanced the said sum to the respondent by arranging the same from his business, savings, friends and relatives. The complainant also mentioned the names of the relatives in the list of witnesses appended to the complaint. During



the course of his cross-examination the complainant stated that he had arranged the money from his sources/circle/in-laws/counsellors/MLA's. Thereafter, the petitioner filed an application under Section 311 of the CrPC in the year 2025 thereby seeking summoning of additional witnesses namely Sh. Gurdev Singh Bansal and Sh. Gurvinder Singh Bansal being the father-in-law and brother-in-law respectively of the petitioner.

5. By the impugned order, the learned Magistrate dismissed the application filed by the petitioner under Section 311 of the Code of Criminal Procedure, 1973 ('CrPC') seeking summoning of additional witnesses and observed as under:

"Complainant has filed the present application to summon additional witnesses namely Sh. Gurdev Singh Bansal and Sh. Gurvinder Singh Bansal who are his father-in-law and brother-in-law respectively. The names of the witnesses were not incorporated in list of witnesses filed along-with complaint and even in the complaint, the complainant has stated that he has arranged the money from his friends and relatives whose names are stated in the list of witnesses filed along-with the application. One witness Sh. Mohit Bhambhani is mentioned in the list of witness and is not produced by the complainant till date. Furthermore in his evidence, the complainant has introduced a new source stating that he has arranged the money from his sources/circles/in-laws/counselers/MLAs. These witnesses were not mentioned in the list of witnesses nor the complainant has alleged anywhere as to how much amount he has borrowed. I am not inclined to allow the present application as the complainant is trying to rewrite a new chapter in the present complaint by way of present application which has not been averred in the complaint in the first stage."

6. The learned counsel for the petitioner submits that the examination of the aforementioned witnesses is necessary for a just and fair decision in the case. He submits that the name of the said witnesses had inadvertently not been mentioned in the list of witnesses due to oversight. He submits that the failure on the part of the petitioner to mention the names of Sh. Gurdev Singh Bansal



and Sh. Gurvinder Singh Bansal in the list of witnesses was purely accidental.

7. Before resorting to consider the facts of the present case, it is essential to examine the principle underlying Section 311 of the CrPC. The same reads as under:

“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.”

8. Section 311 of the CrPC lays down a procedure for summoning or recall of any witness at any stage of trial which can be permitted in order to prevent failure of justice. It is not in doubt that the learned Trial Court has power under Section 311 of the CrPC to summon witness and call for evidence at any stage of trial if it is felt that the same is required for a just decision of the case. The power, however, is not to be exercised in routine manner and ought to only be exercised if the Court deems that the same is necessary to reach a just decision [***Natasha Singh v. CBI: (2013) 5 SCC 741***].

9. The Hon’ble Apex Court in the case of ***Rajaram Prasad Yadav v. State of Bihar : (2013) 14 SCC 461*** discussed a number of decisions and underlined the principles to be considered while dealing with an application under Section 311 of the CrPC. The relevant portion of the same is reproduced hereunder:

“17. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 CrPC read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the courts:

17.1. Whether the court is right in thinking that the new



evidence is needed by it? ~~When~~ the evidence sought to be led in under Section 311 is noted by the court for a just decision of a case?

17.2. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.

17.3. 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.

17.4. The exercise of power under Section 311 CrPC 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.

17.5. 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.

17.6. The wide discretionary power should be exercised judiciously and not arbitrarily.

17.7. 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.

17.8. The object of Section 311 CrPC simultaneously imposes a duty on the court to determine the truth and to render a just decision.

17.9. 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.

17.10. Exigency of the situation, fair play and good sense should be the safeguard, 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.

17.11. 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.

17.12. The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

17.13. 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.

17.14. The power under Section 311 CrPC 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.

(emphasis supplied)

10. This Court has also gone through the contents of the application preferred by the petitioner under Section 311 of the CrPC. From a perusal of the application filed by the petitioner, it is apparent that no worthy grounds have been pleaded that would justify the summoning of the said witnesses. Vague averments have been made that the summoning of the said witnesses are required for a just and fair decision in the case. The only ground taken by the petitioner is that the names of the said witnesses had not been mentioned in the list of witnesses due to inadvertence. Even if the case of the petitioner is taken at the highest, yet it is pertinent to note that the petitioner failed to indicate how the names of the said witnesses not being mentioned in the list of witnesses escaped the notice of the petitioner for a period of six years. The complaint was filed way back in the year 2019. However, the application to summon additional witnesses was filed much later in the year 2025.

11. It is also pertinent to note that the application preferred by the petitioner under Section 311 of the CrPC is further rendered



ambiguous inasmuch as the ~~same~~ does not disclose what amount was borrowed by the petitioner from the said witnesses and how their testimony would be essential for the adjudication of the case. Merely stating that the summoning of the said witnesses are required for a just and fair decision in the case does not suffice to exercise the power under Section 311 of the CrPC.

12. Section 311 of the CrPC gives wide discretionary power to the Court to summon any material witness or person in case the Court feels that his evidence is essential to the just decision of the case. The power, however, has to be exercised in a judicial manner. Admittedly, proceedings under Section 138 of the NI Act are to be decided summarily and are essentially based on the documents.

13. The Hon'ble Supreme Court in ***RE: Expeditious Trial of Cases Under Section 138 of N.I. Act : 2021 SCC OnLine SC 325***, noting the huge pendency of complaints under Section 138 of the NI Act and their adverse effect in disposal of other criminal cases, directed the High Courts to issue practice directions to the Magistrate. It was noted that Section 143 of the Act was introduced as step in aid for quick disposal of the complaints under Section 138 of the NI Act. It was held that it is sufficient for the Magistrate to record the substance of the evidence and deliver a judgment containing a brief statement of reasons for his findings and the Magistrate must give reasons for converting the trial from summary trial to summons trial.

14. In such a case, if applications under Section 311 of the CrPC are allowed in a routine manner, especially, in proceedings in relation to NI Act, the purpose of incorporation of Section 143 to 147 in the Act would be defeated, which was inserted by the legislature to address the huge pendency of complaints filed under



Section 138 of NI Act, as the same had an adverse effect on disposal of other criminal cases.

15. As noted by the learned Magistrate, the conduct of the petitioner showed that the petitioner was trying to rewrite a new chapter in the complaint which had not been averred in the complaint itself.

16. In any event, allowing such delayed applications under the pretext of inadvertence or oversight would undermine the fairness and efficiency of the trial process which should ideally be swift and conclusive to uphold principles of justice.

17. In view of the above, this Court finds no infirmity in the impugned order passed by the learned Magistrate and the same cannot be faulted with.

18. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

JULY 1, 2025