



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

146

CRM-M No.41110 of 2022 (O&M)
Decided on: 19.03.2026

Raj Kumar Goyal

.....Petitioner

Versus

State of Haryana and another

..... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Nipun Vashisth, Advocate for the petitioner.

Name of respondent No.1 deleted vide order dated 09.12.2024.

Mr. Sanjay Verma, Advocate for respondent No.2.

SURYA PARTAP SINGH, J. (Oral):

In an appeal arising out of a judgment of conviction with regard to a case for the commission of offence punishable under Sections 138 of Negotiable Instruments Act 1881, hereinafter being referred to as 'NI Act' only, an application under Section 311 Cr.P.C. was filed by the petitioner-accused. The above mentioned application has been dismissed by the Court of learned Additional Sessions Judge vide order dated 01.08.2022. Aggrieved of the above mentioned order, hereinafter being referred to as 'impugned order' only, the present petition has been filed by the petitioner-accused, hereinafter being referred to as 'petitioner' only, under Section 482 of Cr.P.C.

2. In nut-shell the facts emerging from record are that for the commission of offence punishable under Section 138 of NI Act the petitioner



was summoned as an accused to face trial, and the above mentioned trial culminated into conviction of the petitioner, by virtue of judgment dated 24.05.2017. Aggrieved of the judgment of conviction dated 24.05.2017 the petitioner preferred an appeal in the Court of Sessions and the same has been dealt with by the learned additional Sessions Judge, Gurrugram, hereinafter being referred to as 'Appellate Court' only.

3. During the pendency of above mentioned appeal the petitioner filed an application under Section 311 Cr.P.C. By virtue of above mentioned application the petitioner sought for the permission to examine 'Pankaj Gupta' as a witnesses on the ground that his testimony was essential for proper decision of the case. According to learned counsel for the petitioner as a security, the cheque, for a sum of Rs.1,20,000/-, was given to 'Pankaj Gupta' by the petitioner, and the abovesaid 'Pankaj Gupta' gave the above mentioned cheque to the respondent/complainant. The petitioner wanted to examine 'Pankaj Gupta' as witness to prove the above mentioned fact and for such permission he had filed the above mentioned application.

4. However, the above mentioned application of the petitioner did not find favour before the learned Appellate Court, and the learned Appellate Court dismissed the above mentioned application by observing that:

“The applicant-appellant has been convicted under Section 138 of N.I. Act. By the applications under Section 311 Cr.P.C. and also of additional evidence, he wants to summon Pankaj Gupta from whom loan of Rs. 1,20,000/- was taken through complainant/respondent and cheque was given as security cheque. The cheque in question has allegedly been



misused by respondent/complainant. However, it is relevant to note that applicant/appellant Raj Kumar Goyal in his statement under Section 313 Cr.P.C. has nowhere taken this plea. Name of Pankaj Gupta who had allegedly advanced loan of Rs. 1,20,000/- to appellant was suggested to the complainant during his cross examination as defence. Though, it was suggested that he managed to get loan from somebody at the rate of 3% interest.

Keeping in view the fact that accused has not set up his defence during cross examination or his statement under Section 313 Cr.P.C that the amount was borrowed from Pankaj Gupta, the application for additional evidence dated 21.05.2022 is liable to be dismissed and is accordingly dismissed. So far as application under Section 311 Cr.P.C. is concerned, this provision is contained in Chapter XXIV regarding General Provisions as to inquiries and trials. Therefore, this application is also dismissed.”

5. Heard.

6. It has been contended by learned counsel for the petitioner that, in the complaint one of the question to be determined by the leaned trial Court was, as to whether there was a legally enforceable debt towards the petitioner, and also, whether the cheque in question was issued by the petitioner in favour of the respondent or not.

7. As per learned counsel for the petitioner, in fact, the cheque was given by the petitioner as a security cheque to ‘Pankaj Gupta’, and the abovesaid cheque was illegally collected by the respondent from ‘Pankaj Gupta’ and thereafter misused for the purpose of extracting money by filing a



complaint under Section 138 of NI Act. It has further been submitted that a lapse was committed by learned counsel, representing the petitioner before the learned trial Court, as the above mentioned fact was not proved. According to learned counsel for the petitioner in appeal the abovesaid mistake was realized and therefore a request was made for permission to lead additional evidence, by invoking Section 311 Cr.P.C. but without looking in to the factual matrix of the case, on wrong appreciation of facts as well as law, an erroneous conclusion has been drawn by the learned Appellate Court. According to learned counsel for the petitioner the application filed by the petitioner has been wrongly dismissed, and therefore, there is a need for indulgence and interference in the impugned judgment. In support of his arguments the learned counsel for the petitioner has placed reliance upon the principle of law propounded by the Hon'ble Supreme Court of India in the case of 'Varsha Garg Vs. The State of Madhya Pradesh and others', 2022 AIR (Supreme Court) 3707.

8. The learned counsel for the respondent has controverted the above mentioned arguments.

9. According to learned counsel for the respondent ample opportunity was afforded to the petitioner to lead his evidence before the trial Court, but no effort was made by the petitioner to lead any evidence, sought by virtue of application under Section 311 Cr.P.C.. As per learned counsel for the respondent before the trial Court itself the defence witnesses were examined by the petitioner, but he never summoned or asked for summoning of 'Pankaj Gupta' as witness, and therefore, at appellate stage, just to fill-up the lacuna,



permission to summon 'Pankaj Gupta' as witness could not have been accorded. While defending the impugned order it has been contended by learned counsel for the respondent that a right view has been taken by the learned Appellate Court, and that there is no scope for indulgence or interference in the impugned judgment.

10. The record has been perused carefully.

11. At the very outset it is pertinent to mention here that the learned trial Court while conducting the trial had given sufficient opportunity to the petitioner to lead his evidence and the above mentioned opportunity was duly availed by the petitioner but at that stage neither the petitioner himself appeared in the witness-box, to get himself examined, nor he sought for the examination of above said witness.

12. In such circumstances, it is apparent on the record itself that the application has been filed at a belated stage, i.e. in appeal only, too fill-up the lacuna. Another relevant aspect to be taken into consideration is that, that any justify ground has not been mentioned in the application, which may explain the circumstances why 'Pankaj Gupta' was not summoned as a defence witness. This fact, too, goes against the petitioner.

13. In the present case another relevant aspect to be taken into consideration is that the burden to prove the existence of a legally enforceable debt lies upon the complainant/respondent and he is supposed to discharge his above mentioned burden. Thus, it can be observed that it was not necessary for the petitioner to show that he did not have legally enforceable debt.

14. Although there can be no denial of the legal proposition, that even



at appellate stage, the Court has the jurisdiction to entertain an application under Section 311 Cr.P.C., and grant permission to a party to lead evidence, yet, the moot question to be determined is as to whether in the given fact-situation, pertaining to present case, any such permission should have been accorded by the learned Appellate Court or not. In the present case, the analysis of entire facts and circumstances of the case leads to a conclusion that the petitioner is not entitled for permission to lead additional evidence. In fact, by seeking permission to lead additional evidence the petitioner is trying to fill-up the lacuna which is not otherwise permissible in law.

15. Taking into consideration the totality of facts and circumstances, it is hereby observed that there is no illegality or infirmity in the impugned order passed by the learned Appellate Court, and therefore, there is no scope for indulgence or interference in the impugned order. Hence, it is hereby held that the present petition is devoid of merits and deserves dismissal. The same is hereby **dismissed**, accordingly.

(SURYA PARTAP SINGH)
JUDGE

19.03.2026
Manoj Bhutani

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