



211 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-35059-2018  
Date of decision: 20.01.2025

Tushant and Co. Commission Agents .....Petitioner

versus

Jaskaran Singh ..... Respondent

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

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Present :- Mr. Amritpal Singh Sidhu, Advocate  
for the petitioner.

Mr. Ajeet Pal Singh Pakka, Advocate  
for the respondent.

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**RAJESH BHARDWAJ, J.**

1. Petitioner has approached this Court praying for setting aside the order dated 13.07.2018 passed by learned SDJM, Gidderbaha in Complaint Case No.238 dated 16.07.2014 under Section 138 of the Negotiable Instruments Act, vide which the application of the petitioner filed under Section 311 Cr.P.C. has been dismissed. Further prayer has been made to allow the petitioner to tender/prove into evidence copy of Rokar dated 03.06.2013 by way of additional evidence.

2. Succinctly facts of the case are that the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act for prosecution of the respondent. On finding a *prima facie* case, learned trial Court summoned the respondent to face the trial. During the pendency of the trial before the learned SDJM, Gidderbaha, petitioner filed an application under Section 311 Cr.P.C. for allowing to tender/prove into evidence copy of Rokar dated 03.06.2013 by way of additional evidence. Learned trial Court on hearing counsel for both the sides, found no merit



in the same and hence, dismissed the application vide impugned order dated 13.07.2018. Aggrieved by the same, petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently contended that petitioner had advanced loan to the respondent and the record of the same was maintained in the Rokar. He submits that the application filed was declined on the ground that petitioner had not explained the reason for presenting the said documents at the time of his evidence. He further submits that the Rokar dated 03.06.2013 is essential for the just decision of the case as it contained signed entry of the respondent showing taking of cash loan by him. He submits that the petitioner inadvertently could not produce the same earlier but as per the law settled, application under Section 311 Cr.P.C. can be filed at any stage before the conclusion of the trial. However, the trial Court had failed to appreciate the same and thus, the impugned order being against the law settled, deserves to be *set aside* by allowing the petitioner to produce Rokar dated 03.06.2013 as additional evidence.

4. Learned counsel for the respondent has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the respondent is facing the agony of the trial since the date of the filing of the complaint which was filed in the year 2014. He further submits that both the sides had led their evidences beyond trial at the stage of conclusion. It is at this stage, petitioner with a *mala fide* intention had filed the application under Section 311 Cr.P.C. only in order to prolong the trial and to fill up the lacunae. He submits that the application cannot be allowed as per the law settled. He thus, submits that the petition being



devoid of any merits, deserves to be dismissed with costs.

5. This Court has heard counsel for the parties and perused the record. From the facts and circumstances of the case, this is an admitted fact that petitioner before this Court is the complainant who filed a complaint under Section 138 of the Negotiable Instruments Act for prosecution of the petitioner. As per the allegations in the complaint, the cheque bearing No.000003 dated 30.05.2014 amounting to Rs.14,80,000/- drawn on HDFC Bank when presented by the petitioner was dishonoured by the bank with the remarks "funds insufficient". On summoning of the respondent, the trial commenced. From the perusal of the record, it is deciphered that the petitioner-complainant was given 18 effective opportunities to led his evidence. He led his evidence and cross-examination was conducted by the respondent. Complainant after availing various opportunities completed his evidence and thereafter, the respondent-accused also led his evidence. When the case came up at the stage of pronouncement of the judgment, petitioner filed an application under Section 311 Cr.P.C. Needless to say, petitioner before this Court is the author of the complaint and the record sought to be produced as contended in the application filed under Section 311 Cr.P.C. was very much within his custody and knowledge. There is no plausible reason advanced by counsel for the petitioner which would justify accepting the petition filed at this stage. There is no denial to the fact that provisions of Section 311 Cr.P.C. are sacrosanct in nature and hence, this power as per the law laid down should be invoked liberally by the Court but the Court should be circumspect to the fact that the provisions of Section 311 Cr.P.C. should not be invoked when it is found that the same has been



filed in order to fill up the lacunae in the case. The stage of the trial is also to be appreciated. The facts and circumstances of the case are crystal clear to the fact that the complaint was filed in the year 2014 and when the trial Court was at the stage of pronouncement of the judgment, petitioner chose to file the application under Section 311 Cr.P.C.

6. There is no gainsaying that the provisions of Section 311 Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For the decision of the issue involved, the provisions of Section 311 Cr.P.C. is necessary which read as under:

**“311. Power to summon material witnesses, 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 to the just decision of the case. However, Hon'ble Supreme Court in the case of *Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328* 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 wide 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 on the anvil of the law settled, this Court finds that the application has been filed only in order to fill up the lacunae which fails on the touchstone of the law settled. Thus, this Court does not find any infirmity in the impugned order passed and hence, finding no merit in the petition filed, the same is hereby dismissed.

**20.01.2025**  
*m. sharma*

**( RAJESH BHARDWAJ )**  
**JUDGE**

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