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

Sr. No.156

**CRM-M-50650-2023
Reserved on:-24.03.2026
Pronounced on:-01.04.2026
Uploaded on:-**

*Whether only operative part of the judgment is
Pronounced or the full judgment is pronounced: operative part/full judgment*

VINEET TOMAR**...Petitioner****Versus****INDRAJ SINGH****....Respondent****CORAM: HON'BLE MS. JUSTICE MANDEEP PANNU**

Present:- Mr. Jitender Malik, Advocate
for the petitioner.

Mr. Manoj K. Sood, Advocate
for the respondent.

MANDEEP PANNU, J.

1. The present petition has been filed under Section 482 Cr.P.C. for quashing/setting aside the impugned order dated 05.08.2023 passed in complaint case No. 7800 of 2018 dated 07.07.2018 by the learned Judicial Magistrate 1st Class, Faridabad, whereby the learned trial Court has allowed the application under Section 311 Cr.P.C. for summoning and examining three proposed witnesses.

2. The complainant moved an application under Section 311 Cr.P.C. for leading additional evidence, stating that the accused had taken a friendly loan of ₹4,50,000/- in September 2017 in the presence of certain witnesses, namely Rohit, Shaukin and Vijay. It was submitted that these



witnesses could not be examined earlier during the course of evidence due to unavoidable circumstances, though they are material witnesses necessary for proper adjudication of the case, and that no prejudice would be caused to the accused if they are allowed to be examined.

3. In reply, the accused opposed the application by contending that no such loan transaction ever took place and that the complainant has no privity of contract with him. It was further contended that the said witnesses were never mentioned either in the complaint, pre-summoning evidence, post-summoning evidence, or in the list of witnesses at any stage since the filing of the complaint in the year 2018. The application was stated to be an attempt to fill lacunae in the case and to delay the proceedings by introducing false and irrelevant witnesses, and thus liable to be dismissed. The learned Judicial Magistrate 1st Class, Faridabad, vide order dated 05.08.2023, allowed the application under Section 311 Cr.P.C., observing that the examination of the proposed witnesses is necessary for just decision of the case and proper adjudication of the dispute. It was further observed that the accused would have full opportunity to cross-examine the said witnesses and no prejudice would be caused to him, and accordingly the application was allowed.

4. Aggrieved against the said order, the petitioner preferred a revision petition before the Court of learned Sessions Judge, Faridabad. However, the learned Sessions Judge, vide order dated 05.09.2023, dismissed the revision petition as not maintainable, holding that an order passed under Section 311 Cr.P.C. is purely interlocutory in nature and, in view of the law laid down by the Hon'ble Supreme Court, no revision lies



against such an order. Thereafter, the present petition has been filed under Section 482 Cr.P.C. challenging the aforesaid order passed by the court below.

5. The petitioner has contended that the impugned order dated 05.08.2023 passed by the learned trial Court is illegal, perverse and against the settled principles of law, as the learned Magistrate has failed to apply its judicial mind while allowing the application under Section 311 Cr.P.C. It is argued that the proposed witnesses were never mentioned in the original complaint, list of witnesses or at the stage of preliminary as well as post-summoning evidence, and no explanation has been furnished as to why they were not examined earlier. It is further contended that the case is pending since the year 2018 and the evidence of both the parties already stood closed and the matter was fixed for final arguments, and at such a belated stage, the application under Section 311 Cr.P.C. has been filed only to fill up lacunae in the case and to delay the proceedings. The petitioner has also argued that the complainant is trying to introduce new facts by alleging that the loan was advanced in the presence of the proposed witnesses, which amounts to changing the nature of the case and is impermissible at the fag end of the trial. It is further submitted that the learned trial Court has ignored that Section 311 Cr.P.C. is to be exercised sparingly and only for the ends of justice, whereas in the present case, the application has been moved with oblique motive to create false evidence and to prolong the trial. It is also contended that the complainant has failed to establish any monetary liability against the petitioner and has adopted this method only to fill the gaps in his



case, and therefore, the impugned order, if sustained, would cause irreparable loss and prejudice to the petitioner.

6. The respondent has contended that the application under Section 311 Cr.P.C. has been rightly allowed by the learned trial Court as the proposed witnesses are material for the just and proper adjudication of the case. It is argued that due to unavoidable circumstances, the said witnesses could not be examined earlier and their examination is necessary to bring out the truth. It is further submitted that no prejudice would be caused to the petitioner, as full opportunity of cross-examination would be available. The respondent has also contended that the power under Section 311 Cr.P.C. is wide and is to be exercised to meet the ends of justice, and the learned trial Court has rightly exercised its discretion. It is thus prayed that the present petition being devoid of merit is liable to be dismissed.

7. Having heard learned counsel for the parties and perused the record, this Court finds merit in the present petition.

8. The impugned order dated 05.08.2023 passed by the learned Judicial Magistrate 1st Class, Faridabad, allowing the application under Section 311 Cr.P.C., cannot be sustained in the eyes of law. It is evident from the record that the complaint pertains to proceedings under Section 138 of the Negotiable Instruments Act, which are predominantly based on documentary evidence, and the complainant is required to disclose his entire case at the initial stage, including the list of witnesses sought to be examined.

9. In the present case, the names of the proposed witnesses were neither mentioned in the complaint nor in the list of witnesses, nor were they



examined at the stage of pre-summoning or post-summoning evidence. It is only during the course of cross-examination that the complainant introduced the version that the alleged loan was advanced in the presence of the said witnesses. This Court is of the considered view that such an improvement in the case, emerging during cross-examination, cannot confer a right upon the complainant to subsequently seek summoning of those witnesses under the guise of being “material witnesses”.

10. Furthermore, it is not disputed that the evidence of the complainant had already been concluded and the matter was fixed for final arguments. At such a belated stage, permitting the complainant to examine additional witnesses, who were never disclosed earlier, would amount to allowing the complainant to fill up lacunae in his case, which is impermissible in law. The power under Section 311 Cr.P.C., though wide, is not unbridled and cannot be exercised to enable a party to repair the inherent weaknesses of its case or to change the nature of the case after conclusion of evidence.

11. The learned trial Court, while passing the impugned order, has failed to appreciate these material aspects and has exercised its discretion in a mechanical manner, without recording any cogent reasons as to how the proposed witnesses are essential for the just decision of the case. The order, thus, suffers from non-application of judicial mind and is contrary to the settled principles governing the exercise of power under Section 311 Cr.P.C.

12. In view of the above discussion, this Court is satisfied that the impugned order has resulted in serious prejudice to the petitioner and amounts to an abuse of the process of the Court.



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13. Accordingly, the present petition is allowed, the impugned order dated 05.08.2023 passed by the learned Judicial Magistrate 1st Class, Faridabad, is hereby set aside, and the application under Section 311 Cr.P.C. filed by the complainant stands dismissed.

14. All pending applications, if any, also stand disposed of.

01.04.2026

Anu

**(MANDEEP PANNU)
JUDGE**

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