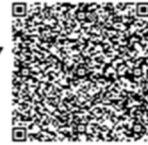


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-5364-2019 (O&M)

Date of decision: 16.04.2026

Sarwan Singh

...Petitioner

Versus

Mohan Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. S. S. Kainth, Advocate
for the petitioner.

None for respondent No. 1.

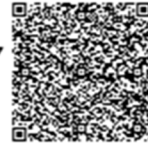
Ms. Ruchika Sabherwal, Senior DAG, Punjab
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner seeking quashing of order dated 19.01.2019 (Annexure P-3), passed by the Court of learned Additional Sessions Judge, Fatehgarh Sahib in Criminal Revision No. 597 of 2018, titled as ***Mohan Singh vs. Sarwan Singh***, whereby while allowing the petition, the order dated 12.03.2018, passed by the Court of learned Judicial Magistrate First Class, Fatehgarh Sahib in Criminal Complaint bearing NACT No. 79 of 2015, titled as ***Mohan Singh vs. Sarwan Singh***, had been set aside and the application filed by the respondent/complainant under Section 311 of Cr.P.C. was allowed.

2. Brief facts relevant for the purpose of disposal of this petition are that the respondent No.1 (*hereinafter referred to as 'complainant'*) has filed the aforesaid complaint under Section 138 of the Negotiable Instruments Act,

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1881 against the petitioner on the allegations that in order to discharge his legal enforceable debt, the petitioner had issued a cheque for a sum of Rs.20 Lakhs, which had been dishonoured on presentation. He even failed to make the payment of the cheque amount despite issuance of legal notice, thereby compelling the complainant to file the aforementioned complaint. The petitioner has been summoned as an accused and is facing trial. After cross-examination of the petitioner, an application under Section 311 of Cr.P.C. was filed by the complainant making prayer for granting him an opportunity to re-examine himself and also to produce some witnesses including a fingerprint expert and some bank officials for the purpose of establishing his financial capacity and liability of the petitioner towards him. The learned Magistrate, vide order dated 12.03.2018, dismissed the said application by observing that the complainant intended to reopen the entire case after the defence of the petitioner was unfolded. It was also observed that he had already been put to cross-examination and, therefore, the said application did not deserve to be allowed.

3. As revealed from the record, the complainant filed a revision petition against the order dated 12.03.2018 and the learned revisional Court allowed the said petition, vide impugned order dated 19.01.2019 by imposing a rider that the complainant would be allowed to avail only three effective opportunities within a gap of not more than a period of 15 days to lead and conclude his entire evidence and equal number of opportunities would be granted to the petitioner. Feeling aggrieved, the petitioner has filed the present petition.

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4. It is argued by learned counsel for the petitioner that the impugned order dated 19.01.2019 is not sustainable in the eyes of law as while passing the same, the learned revisional Court did not consider and appreciate the fact that the complainant had already been examined in detail and further cross-examined at the time of appearing as a witness. While cross-examining him, the entire defence of the petitioner had been disclosed to him. To fill up the lacunas in the case, he could not be allowed to re-examine himself or to produce additional evidence. It is also argued that no ground for summoning the other witnesses as mentioned in the application was made out. By doing so, the learned revisional Court has caused great prejudice to the case of the petitioner. The proposed evidence was not at all required for just decision of the case. The order passed by the learned revisional Court is a cryptic and non-speaking order, whereas the order passed by the learned Magistrate was well reasoned and required no interference. It is, therefore, argued that the impugned order dated 19.01.2019 is liable to be set aside, this petition deserves to be allowed and the application filed by the complainant under Section 311 of Cr.P.C. is liable to be dismissed.

5. There is no representation on behalf of respondent No. 1.

6. Learned State counsel has not chosen to address any argument as the State is not a necessary party to the petition.

7. This Court has heard the submissions made by learned counsel for the petitioner, besides going through the material placed on record.

8. It is apparent from the record that the complainant had already been examined and he was sought to be re-examined by moving an

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application under Section 311 of Cr.P.C. It is well settled proposition of law that an application under section 348 of BNSS (*which is pari materia with Section 311 of Cr.P.C.*) must not be allowed only to fill up lacunas in the case of the prosecution, or of the defence or to give an unfair advantage to the opposite party. It is also well settled that the power, under Section 311 of the Code, can be exercised by the court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

9. In ***Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of the Code as under:-

“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done

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with an object of getting the evidence in aid of a just decision and to uphold the truth.”

10. In ***Mannan Sk. and others Versus State of West Bengal and another 2014 (13) SCC 59***, Hon'ble Apex Court had allowed the application filed under Section 311 Cr.P.C. and the witness was recalled and re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

11. On applying the above discussed position of law to the peculiar facts of the present case, this Court finds no infirmity in the impugned order passed by the learned revisional Court. The scope of Section 311 of Cr.P.C. (*now Section 348 of BNSS*) is wide and is intended to empower the Court to arrive at the truth and render a just decision. The provision is not circumscribed by procedural technicalities but is guided by the paramount consideration of justice. The contention of the petitioner that the complainant seeks to fill up lacunae is not borne out from the record in a manner so as to warrant interference. The distinction between “lacuna” and “necessary evidence” must be kept in mind. While a lacuna cannot be permitted to be filled, the Court is not powerless to permit additional evidence if the same appears essential for a just adjudication of the case. In the present case, the proposed evidence, particularly with regard to financial capacity and liability, goes to the root of the matter in a complaint under Section 138 of the Negotiable Instruments Act. Such evidence cannot be said to be wholly irrelevant or an attempt merely to protract proceedings. It is also significant that the learned revisional Court has exercised its discretion judiciously by imposing strict conditions, including limiting the number of effective

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opportunities and fixing timelines. This adequately safeguards the interests of the accused and prevents any undue delay or prejudice. The argument that the defence of the petitioner had already been disclosed during cross-examination does not preclude the Court from permitting additional evidence if it is otherwise necessary for a just decision. The power under Section 311 of Cr.P.C. is not controlled by the stage of trial but by the requirement of justice. No perversity, illegality or material irregularity has been pointed out in the impugned order warranting interference under the inherent jurisdiction of this Court. Consequently, the present petition, being devoid of merit, is hereby dismissed.

16.04.2026

Waseem Ansari

**(MANISHA BATRA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No