

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

CRM(M) 400/2023 CrIM(963/2023)

FAROOQ AHMAD WANI

...Appellant(s)/Petitioner(s)

Through: Mr. Aarif Javaid Khan, Advocate

**Vs.**

TARIQ AHMAD KHAN

...Respondent(s)

Through:

**CORAM:**

**HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE**

**ORDER**  
**06.05.2024**

**Oral:**

1. The petitioner in the instant petition filed under Section 482 Cr.P.C is seeking setting aside of orders dated 31<sup>st</sup> March, 2021 and 27<sup>th</sup> July, 2022 passed by the court of Chief Judicial Magistrate and Principal Sessions Judge, Anantnag, respectively (for short the Trial Court and the Revisional Court).
2. Facts giving rise to the filing of the instant petition reveal that the respondent herein filed a complaint under and in terms of the provisions of Negotiable Instruments Act, 1881 against the accused petitioner herein for dishonor of a cheque issued by accused petitioner herein in favour of complainant respondent herein before the trial court, wherein the trial court proceeded with the trial of the same after taking cognizance and summoning the accused petitioner herein. During the course of the proceedings before the trial court, the complainant respondent herein adduced his evidence in support of the complaint, whereafter, the trial court called upon the accused petitioner to enter upon his evidence for defense and on 31<sup>st</sup> March,

2021, the counsel for the accused petitioner herein made a statement that he does not want to produce any evidence as a consequence whereof, the defense evidence came to be closed by the trial court on 31<sup>st</sup> March, 2021.

3. On 13<sup>th</sup> December, 2022, the accused petitioner herein, however, filed an application under Section 311 Cr.P.C before the trial court praying therein for leave of the court for summoning witnessesn being Branch Head of Jammu & Kashmir Bank Cheeni Chowk, Anantnag, Bank Officials of State Bank of India Branch Anantnag, one Ab. Hameed Wani C/o Showkat Gas Agency Anantnag and another Aushiq Hussain C/o Khan Enterprises Reshi Bazar Anantnag, in order to prove that the accused petitioner paid whole cheque amount outside the court being Rs. 2,70,270/- to the complainant respondent herein. The said application came to be opposed by the complainant respondent herein before the trial court, whereafter the application in terms of impugned order dated 31.03.2021, came to be rejected by the trial court, while order came to be challenged by the accused petitioner herein in a revision petition before the Revisional court, while revision petition came to be dismissed on 27.07.2022.

4. The petitioner has challenged orders dated 31.03.2022 & 27.07.2022, in the instant petition on multiple grounds.

**Heard learned counsel for the petitioner and perused on record.**

5. It is settled position of law that the provisions of Section 311 Cr.P.C have been enacted for enabling a court to render a just decision requiring the court to exercise a discretionary power in this regard at any stage of an enquiry, trial or other proceedings. The very usage of the expressions in the Section i.e. “any court” and “at any stage”

clearly spells out that the section is expressed in widest possible terms and do not circumscribe or limit the discretion of the court in any way though the settled principle of law is that widest power requires a corresponding caution and carefulness in exercise of such power with a further caveat to be exercised judicially and in furtherance of the cause of justice inasmuch as not to exercise the said power for filling up of lacunas in evidence.

6. Reverting back to the case in hand, although record reveals that the accused petitioner herein have had been called upon by the trial court after closure of evidence of the complainant respondent herein to enter upon the defense and to produced his evidence, whereupon the counsel for the accused petitioner had made a statement for not producing any evidence, yet the counsel for the petitioner herein appearing before this Court would contend that the said counsel have had been never authorized or instructed by the accused petitioner to make such a statement.
7. Be that as it may, fact remains that the accused petitioner has filed an application under the provisions of Section 311 of the Code for producing his evidence in support of his defense to prove that the amount covered by the cheque/s in respect of which the complainant respondent herein filed complaint before the trial court stands paid to the complainant respondent herein during the pendency of the said complainant, the trial court, however, overlooking the said contention of the accused petitioner herein urged in the application rejected the application for two fold-reasons, one that the counsel for the accused petitioner had made a statement for not producing any defense

evidence and secondly that a considerable period of time has been consumed in adjudicating upon the complaint.

Since the counsel for the petitioner herein has questioned the aforesaid statement claimed to have been made by the counsel for the accused petitioner herein before the trial court, for which statement the accused petitioner herein in law cannot be held liable if the same has been made without his instructions.

The next issue for consideration of this Court would be as to whether the application of the accused petitioner could have been rejected by the trial court on the ground of the age of the case or the period of time having been consumed in trying the same. The said issue is more res-integra and stands settled by the Apex Court in case titled as "*Manju Devi Vs. State of Rajasthan and Anr.*" Reported in 2019 Volume 6 SCC page 203, wherein it has been specifically held that the age of a case, by itself, cannot be a decisive of the matter when a prayer is made for examination of a material witness.

8. Having regard to the facts and circumstances of the case taken cognizance of in the preceding paras inasmuch as the aforesaid principle of law laid down by the Apex Court, it needs to be noted here that the ambit, scope and object of the provisions of Section 311 Cr. P.C is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts to arrive at a just decision of the case, moreso, if the fresh evidence to be obtained is essential to the just decision of the case.

9. Viewed thus, for the aforesaid reasons the petition succeeds. Accordingly, the impugned orders dated 31.03.2022 & 27.07.2022 are

