

**(2019) 03 CHH CK 0048**

**In the Chhattisgarh High Court**

**Case No :** Criminal Miscellaneous Petition (CRMP) No. 1615 Of 2017

Sahu Shivaji

APPELLANT

Vs

Ma Sakti Steel Traders Proprietor Sujeet Jaiswal

RESPONDENT

**Date of Decision :** 07-03-2019

**Acts Referred:**

Negotiable Instruments Act, 1881 — Section 138  
Code Of Criminal Procedure, 1973 — Section 311

**Citation :** (2019) 03 CHH CK 0048

**Hon'ble Judges :** Goutam Bhaduri, J

**Bench :** Single Bench

**Advocate :** Vikash Pandey, A.N. Pandey

**Final Decision :** Allowed

## Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the order dated 06.09.2017 passed in criminal revision No.26/2017, whereby the revision preferred against the order dated 19.04.2017 was dismissed by the Court below.

3. The facts as would reveal that a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act) was preferred by the respondent, wherein the complainant was examined on 25.10.2016 and on that date he was cross-examined by the counsel of the accused. Subsequently, an application under Section 311 Cr.P.C. was filed making a prayer that the original counsel was the senior counsel Shri Anwarrul Haque on that date he was out of station and the cross-examination was conducted by his junior Shri Surendra Pandey without any instructions and certain questions were left out to be put in the cross-examination, therefore, one chance may be given to the petitioner/accused to get him cross-examined. The said application was dismissed by order dated 19.04.2017. Subsequently, having challenged in the

revision, the same was also dismissed.

4. Learned counsel for the petitioner would submit that the complainant was examined though was cross-examined but certain relevant questions could not be put forth and thereafter when it was discovered by the senior, the instant application under Section 311 Cr.P.C. was filed. He further submits that in order to contest the case on merits one opportunity may be granted to the petitioner to cross-examine the witness namely Sujeet Jaiswal and no prejudice would be caused if one opportunity is granted to the petitioner.

5. Per contra, learned counsel for the respondent opposes the prayer made by learned counsel for the petitioner and submits that the order of both the Courts below are well merited, which do not call for any interference.

6. Perused the order dated 19.04.2017. The trial Court while dismissing the application has stated that since the memo contains the name of Shri Anwarrul Haque and Shri Surendra Pandey and perusal of the deposition sheet reveals that the proper examination has been made and no reason has been assigned to invoke Section 311 Cr.P.C., therefore, the same was dismissed.

7. Perused the order-sheet of the Court below. The application moved under Section 311 Cr.P.C. is also perused. The reason has been assigned that since the senior was out of station, as such proper defence could not be put forth.

Taking into the facts of this case, it appears that no prejudice would be caused if one opportunity is given to the petitioner to further cross-examine the complainant. By dismissing the application under Section 311 Cr.P.C., the trial Court has observed that the proper cross-examination has been made.

8. If certain questions have not been put forth, the judgment may eventually rendered inconclusive or speculative, therefore, considering the facts and the submission, in the opinion of this Court, it appears that it would be essential for the just decision of the case to call for the re-examination of such person i.e. the complainant. Consequently, the petition is allowed and the order dated 06.09.2017 passed in Criminal Revision No.26/2017 is set aside. Application filed under Section 311 Cr.P.C. is allowed and the petitioner is allowed to cross-examine the complainant subject to payment of cost of Rs.5000/- to the respondent. It is further made clear that the payment of cost would be a condition precedent and further in order to call for the witness, the diet money and expenses shall also be deposited by the petitioner to call the witness for re-examination before the Court. The trial Court shall further be obliged to conclude the case within a period of 45 days from the date of receipt of this order. Registry is directed to sent back the original record forthwith to the trial Court.

9. Accordingly, the petition stands allowed.