HIGH COURT OF DELHI

BENCH: JUSTICE NAVIN CHAWLA

Date of Decision: 08.04.2024

CRL.M.C. 1171/2022 & CRL.M.A. 5067/2022

CRL.M.C. 1172/2022 & CRL.M.A. 5069/2022

RAHUL DARBARI … Petitioner

Versus

ARUN KUMAR KHOBRAGADE & ORS. … Respondents

Legislation:

Section 251, 311, 313, 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Section 138 of the Negotiable Instruments Act, 1881 (NI Act)

Section 165 of the Indian Evidence Act, 1872

Subject: Criminal petitions challenging the order of the Trial Court, which dismissed an application under Section 311 Cr.P.C. for recalling the petitioner as a witness in cases concerning Section 138 of the NI Act.

Headnotes:

Petitioners Challenge to Trial Court Order – Dismissal of application under Section 311 Cr.P.C. for recalling petitioner as witness in complaints under Section 138 NI Act – Petitioner sought to introduce previous court pleadings and documents related to the accused – Application dismissed by Trial Court [Paras 1, 12-13, 31].

Section 482 of Cr.P.C. challenging the Trial Court's order dismissing the application under Section 311 Cr.P.C. for recalling the petitioner as a witness – Complaints filed under Section 138 of Negotiable Instruments Act, 1881 – Allegation of seeking to place on record documents from earlier petitions filed by respondents under Section 482 of Cr.P.C. – Earlier application under Section 311 Cr.P.C. withdrawn by petitioner – Delay in filing present application – Exercise of discretion under Section 311 Cr.P.C. – Scope of the provision – Principles governing recall of witnesses – Essentiality of evidence

to the just decision of the case – Discretionary power to be exercised judicially – Dismissal of application for lack of justification for delay and no change in circumstances – Right of accused to expeditious conclusion of trial – Proceedings in complaint cases under Section 138 of NI Act to be conducted as summary trial – Nature of offence under Section 138 of NI Act – Application dismissed. [Paras 1-38]

Decision – Petitions dismissed for lack of merit, with no interference in the Trial Court's order – Right to use certified copy of court's previous order acknowledged [Paras 36-38].

Referred Cases:

- U.T. of Dadra & Nagar Haveli and Anr v. Fatehsinh Mohansinh Chauhan, (2006) 7 SCC 529
- Varsha Garg v. The State of Madhya Pradesh and Ors., 2022 SCC OnLine SC 986
- Iddar and Ors v. Aabida and Anr., (2007) 11 SCC 211
- Central Bureau of Investigation v. Abhishek Verma, 2023 SCC OnLine Del 724
- Jamatraj Kewalji Govani v. State of Maharashtra, 1967 SCC OnLine SC 19
- Fatehsinh Mohansinh Chauhan v. Union Territory of Dadra and Nagar Haveli, 2003 SCC OnLine Bom 207
- Boby @ Sanjeev Singh v. State of Madhya Pradesh and Anr., 2010 SCC OnLine MP 582
- Inayat v. Rex, 1949 SCC OnLine All 110
- Smt. Fatima Hyder v. State of M.P. & Ors., (Judgment dated 08.09.1992 in Misc.Cri.C.No. 2812 of 1992)
- Kesava Pillai and Ors. V. Emperor, 1929 SCC OnLine Mad 111
- State of Sikkim v. Pemba Sherpa, 1980 SCC OnLine Sikk 7
- Kripaindhu Pothai v. State of Orissa, 1985 SCC OnLine Ori 272
- Bhikari Charan Bhoi v. The State of Orissa, 1991 SCC OnLine Ori 427
- Kouta Markandeyulu v. Republic of India, 1988 SCC OnLine Ori 140
- Dr. Krishna Paul v. State of UP, (1996) 7 SCC 194
- G.S. Raju v. CBI, 2011 SCC OnLine Del 445
- Yeshwant Namdeorao Zade v. Anup, 2010 SCC OnLine Bom 953
- Rajaram Prasad Yadav v. State of Bihar, (2013) 14 SCC 461
- Natasha Singh v. CBI, (2013) 5 SCC 741
- Nayna Rajan Guhagarkar v. The State of Maharashtra, 2021 SCC OnLine Bom 1054
- Karthik S Nair v. State of Kerala and Anr., 2023 SCC OnLine Ker 6847
- Satbir Singh v. State of Haryana, 2023 SCC OnLine SC 1086
- Ratanlal v. Prahlad Jat, (2017) 9 SCC 340
- Vijay Kumar v. State of U.P., (2011) 8 SCC
- Zahira Habibullah Sheikh v. State of Gujarat, (2006) 3 SCC 374
- State (NCT of Delhi) v. Shiv Kumar Yadav, (2016) 2 SCC 402
- Umar Mohammad v. State of Rajasthan, (2007) 14 SCC 711
- Manju Devi v. State of Rajasthan, (2019) 6 SCC 203

- Swapan Kumar Chatterjee v. Central Bureau of Investigation, (2019) 14 SCC 328
- Harendra Rai v. State of Bihar, 2023 SCC OnLine SC 1023
- Mohd. Muslim @ Hussain v. State (NCT of Delhi), 2023 SCC OnLine SC 352
- Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291
- Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re, (2021) 16 SCC 116
- P. Mohanraj v. Shah Bros. Ispat (P) Ltd., (2021) 6 SCC 258
- Dhruvaram Murlidhar Sonar v. State of Maharashtra, (2019) 18 SCC 191

Representing Advocates:

Mr. Ajay Brahme, Ms. Varisha Sharma for petitioner

Mr. Ravi Prakash, Mr. Deboprio Moulik, Mr. Ashish Verma for respondents

J U D G M E N T

1. These petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 18.02.2022 passed by the learned Metropolitan Magistrate-03 (NI Act), New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the 'Trial Court') in the complaints filed by the petitioner herein under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'NI Act'), being Complaint Case no.54783/2016 (in CRL M.C. 1171/2022) and Complaint Case no.53009/2016 (in CRL M.C. 1172/2022), both titled ***Rahul Darbari v. Arun Kumar Khobragade & Ors***., dismissing the application filed by the petitioner/complainant under Section 311 of the Cr.P.C. for recalling himself as a witness.

Factual Matrix:

2. The above complaints were filed by the petitioner on 26.09.2015.
3. The respondents filed petitions under Section 482 of the Cr.P.C., one of them being Crl.M.C. No. 2496/2016, seeking quashing of the said complaints.
4. The petitioner herein, as a respondent in the above petition, filed his counter affidavit, and the respondents, as petitioners in those petitions, filed their rejoinders.

5. The said petitions were dismissed by this Court vide its judgment and Order dated 18.02.2019.

6. Notice under Section 251 of the Cr.P.C. was framed against the respondents vide Order dated 08.04.2019. The respondent pleaded not guilty and requested for a trial.

7. The petitioner, on 16.09.2019, filed an application under Section 311 of the Cr.P.C., seeking to place on record the pleadings and documents filed in the above mentioned petitions filed by the respondents.

8. The respondents filed their reply to the above application on 09.10.2019.

9. The said application filed under Section 311 of the Cr.P.C. was withdrawn by the petitioner on 23.10.2019.

10. The petitioner closed his evidence on 03.03.2020.

11. The statement of the respondents/accused under Section 313 of the Cr.P.C. was recorded on 10.12.2021, and as they did not wish to lead any evidence in their defence, the matter was put up for final arguments, as is recorded in the order dated 14.12.2021.

12. It is at this stage, that the petitioner filed the above application under Section 311 of the Cr.P.C., on 11.01.2022, wishing to place on record copies of the petitions filed by the accused/respondents herein under Section 482 of the Cr.P.C. before this Court, along with the documents filed therein; the counter affidavit(s) and the rejoinder(s) filed in those proceedings; copy of the Order dated 18.02.2019 of this Court passed in the said petitions; and e-mail correspondences between the complainant and the accused, which, to the own assertion of the petitioner, formed part of the counter(s) filed to the petitions by the respondents herein before this Court.

13. The said application has been dismissed by the learned Trial Court by the Impugned Order dated 18.02.2022.

Submissions of the learned counsel for the Petitioner:

14. The learned counsel for the petitioner submits that the documents that are now sought to be produced on record, are one of the petitions filed earlier by the respondent, being Crl.M.C. No. 2496/2016, titled ***Arun Kumar Khobragade v. Rahul Darbari***; the counter affidavit(s) and the rejoinder(s) filed therein; and the Order dated 18.02.2019 passed by this Court thereon. He submits that the same being matter of record, should be allowed to be placed on record and should be considered by the learned Trial Court in order to have a complete and fair adjudication of the complaint filed by the petitioner.

15. He submits that the best available evidence should be allowed to be brought before the Court, and the petitioner should not be deprived of producing such evidence. He submits that the Court should, in fact, be magnanimous even in permitting mistakes to be cured. In support, he places reliance on the judgments of the Supreme Court in ***U.T. of Dadra & Nagar Haveli and Anr v. Fatehsinh Mohansinh Chauhan,*** (2006) 7 SCC 529; ***Varsha Garg v. The State of Madhya Pradesh and Ors.*** 2022 SCC OnLine SC 986; ***Iddar and Ors v. Aabida and Anr.*** (2007) 11 SCC 211; and of this Court in ***Central Bureau of Investigation v. Abhishek Verma,*** 2023 SCC OnLine Del 724.
16. He submits that Section 311 of the Cr.P.C. needs to be read along with Section 165 of the Indian Evidence Act, 1872, and in fact, it is the duty of the court to seek production of documents in order to discover or to obtain proper proof of the relevant facts. In support, he places reliance on the judgment of the Supreme Court in ***Jamatraj Kewalji Govani v. State of Maharashtra,*** 1967 SCC OnLine SC 19.
17. Placing reliance on the judgment of the High Court of Bombay in ***Fatehsinh Mohansinh Chauhan v. Union Territory of Dadra and Nagar Haveli,*** 2003 SCC OnLine Bom 207; and of the Madhya Pradesh High Court in ***Boby @ Sanjeev Singh v. State of Madhya Pradesh and Anr.,*** 2010 SCC OnLine MP 582, he submits that even if the first application filed by the petitioner under Section 311 of the Cr.P.C. was withdrawn or is even rejected on merits, it would not bar the filing of the second/subsequent application for the same relief.
18. He submits that the scope of Section 311 of the Cr.P.C. is wide and is to be exercised in the interest of justice; it could be both in favour of and against the accused. In support, he places reliance on the judgment of the Allahabad High Court in ***Inayat v. Rex*** 1949 SCC OnLine All 110.
19. He submits that even where some evidence is inadvertently left out, in the interest of justice, such evidence should be allowed to be brought on record to find the truth. In support, he places reliance on the judgment of the Madhya Pradesh High Court in ***Smt. Fatima Hyder v. State of M.P.*** **& Ors.,** (Judgment dated 08.09.1992 in Misc.Cri.C.No. 2812 of 1992); of the High Court of Madras in ***Kesava Pillai and Ors. v. Emperor,*** 1929 SCC OnLine Mad 111; and of the Sikkim High Court in ***State of Sikkim v. Pemba Sherpa,*** 1980 SCC OnLine Sikk 7.
20. He submits that as the documents sought to be relied upon were filed by the respondents themselves, therefore, it cannot be a case of filling up a lacuna in the trial. He submits that such evidence is essential for the learned Trial

Court to arrive at a just decision and should not be shut out merely on the grounds of delay or laches. He submits that the object should be to reach the root of the matter and elicit the truth by obtaining proper proof of the facts for arriving at a just and correct decision and that alone should matter with the Criminal Court. In support, he places reliance on the judgments in ***Kripaindhu Pothai v. State of Orissa,*** 1985 SCC OnLine Ori 272; ***Bhikari Charan Bhoi v. The State of Orissa,*** 1991 SCC OnLine Ori 427; ***Kouta Markandeyulu v. Republic of India,*** 1988 SCC OnLine Ori 140; ***Mahabir @ Hira v. Emperor*** S.C. 65 Ind. Cas. 431; ***Dr. Krishna Paul v. State of UP,*** (1996) 7 SCC 194; ***G.S. Raju v. CBI***, 2011 SCC OnLine Del 445; and in ***Yeshwant Namdeorao Zade v. Anup*** 2010 SCC OnLine Bom 953.

Submissions of the learned counsel for the Respondents:

21. On the other hand, the learned counsel for the respondents submits that the petitioner had earlier also filed an application under Section 311 of the Cr.P.C., seeking leave to place on record the very same documents, except the Order dated 18.02.2019 of this Court, that are now sought to be placed on record by the application in question. He submits that the said application was withdrawn by the petitioner, vide Order dated 23.10.2019 passed by the learned Trial Court. He submits that it is only on the conclusion of the evidence, and when the complaint cases were fixed for final hearing before the learned Trial Court, that the petitioner again moved the present application seeking to place on record the very same documents. He submits that the trial in the above complaint cases has been pending since the year 2015 and the petitioner wishes to re-open the whole trial.

22. Placing reliance on the judgments of the Supreme Court in ***Rajaram Prasad Yadav v. State of Bihar,*** (2013) 14 SCC 461; and ***Natasha Singh v. CBI,*** (2013) 5 SCC 741; of the Bombay High Court in ***Nayna Rajan Guhagarkar v. The State of Maharashtra*** 2021 SCC OnLine Bom 1054; and of the High Court of Kerala in ***Karthik S Nair v. State of Kerala and Anr***., 2023 SCC OnLine Ker 6847, he submits that such an application cannot be allowed at this stage.

Analysis & Findings

23. I have considered the submissions made by the learned counsels for the parties.

24. Section 311 of the Cr.P.C. reads as under:-

*"**311. Power to summon material witness, 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."*

25. Section 311 of the Cr.P.C. is a salutary provision which empowers the Court to 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, if his evidence appears to it, to be essential to the just decision of the case. It is aimed at empowering the Court to find out the truth and to render a just decision. The object of the provision is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. Having said that, it is to be kept in mind that this power is discretionary, and is to be exercised only for strong and valid reasons, and with caution and circumspection. Recall of a witness cannot be a matter of course. Recently, in ***Satbir Singh v. State of Haryana***, 2023 SCC OnLine SC 1086, the Supreme Court carried out a study on the precedents on Section 311 of the Cr.P.C., as under:

*"**9.** Section 311 of the Criminal Procedure Code, 1973 (hereinafter referred to as the "CrPC") has engaged this Court's attention before. We will advert to a few decisions of recent vintage. While overturning an order of the High Court allowing an application for recall of a witness, which was rejected by the trial Court, this Court held as under, in Ratanlal v. Prahlad Jat, (2017) 9 SCC 340:*

„17. In order to enable the court to find out the truth and render a just decision, the salutary provisions of Section 311 are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.

18. In Vijay Kumar v. State of U.P. (2011) 8 SCC, this Court while explaining scope and ambit of Section 311 has held as under :

"17. Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of [CrPC] and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously."

19. In Zahira Habibullah Sheikh v. State of Gujarat (2006) 3 SCC 374, this Court has considered the concept underlying under Section 311 as under :

"27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

20. In State (NCT of Delhi) v. Shiv Kumar Yadav (2016) 2 SCC 402, it was held thus :

"… Certainly, recall could be permitted if essential for the just decision, but not on such consideration as has been adopted in the present case. Mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall. Recall is not a matter of course and the discretion given to the court has to be exercised judiciously to prevent failure of justice and not arbitrarily. While the party is even permitted to correct its bona fide error and may be entitled to further opportunity even when such opportunity may be sought without any fault on the part of the opposite party, plea for recall for advancing justice has to be bona fide and has to be balanced carefully with the other relevant considerations including un-called for hardship to the witnesses and un-called for delay in the trial. Having regard to these considerations, there is no ground to justify the recall of witnesses already examined."

21. The delay in filing the application is one of the important factors which has to be explained in the application. In Umar Mohammad v. State of Rajasthan (2007) 14 SCC 711:

"38. Before parting, however, we may notice that a contention has been raised by the learned counsel for the appellant that PW 1 who was examined in Court on 5-7-1994 purported to have filed an application on 1-5-1995 stating that five accused persons named therein were innocent. An application filed by him purported to be under
Section 311 of the Code of Criminal Procedure was rejected by the learned trial Judge by order dated 13-5-1995. A revision petition was filed thereagainst and the High Court also rejected the said contention. It is not a case where stricto sensu the provisions of Section 311 of the Code of Criminal Procedure could have been invoked. The very fact that such an application was got filed by PW 1 nine months after his deposition is itself a pointer to the fact that he had been won over. It is absurd to contend that he, after a period of four years and that too after his examinationin-chief and cross-examination was complete, would file an application on his own will and volition. The said application was, therefore, rightly dismissed.""

10. In Manju Devi v. State of Rajasthan, (2019) 6 SCC 203, this Court emphasized that a discretionary power like Section 311, CrPC is to enable the Court to keep the record straight and to clear any ambiguity regarding the evidence, whilst also ensuring no prejudice is caused to anyone. A note of caution was sounded in Swapan Kumar Chatterjee v. Central Bureau of Investigation, (2019) 14 SCC 328 as under:

„10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. 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 vide 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.

12. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier are not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision."

> ***11.*** *In Harendra Rai v. State of Bihar, 2023 SCC OnLine SC 1023, a 3-Judge Bench of this Court was of the opinion that Section 311, CrPC should be invoked when „… it is essential for the just decision of the case."*

26. I need not multiply the authorities on the above provision and the scope thereof, as the law on the same is now too well settled. In fact, there can be no dispute to the proposition of law canvassed by the learned counsel for the petitioner and as recorded hereinabove. However, the question before this Court is whether the said proposition of law in any manner supports the plea of the petitioner in the facts of the present case. The answer, in my view, has to be in the negative.

27. As is evident from the above narration of facts, the petitioner seeks to place on record the pleadings of the parties in the Petition filed by the respondents before this Court. The said petition had culminated in the judgment and Order dated 18.02.2019 of this Court. It is thereafter, that the Notice under Section 251 of the Cr.P.C. was framed against the respondents, on 08.04.2019. On 16.09.2019, the petitioner, by way of an application filed under Section 311 of the Cr.P.C., sought to bring on record the documents that are now being sought to be brought on record by way of the application in question. The said application was withdrawn by the petitioner on 23.10.2019. The petitioner has not sought to explain the reason for withdrawing the said application, nor submitted any change in circumstances that would justify a new application with the same prayer to be filed afresh.

28. The judgment of the High Court of Bombay in ***Fatehsinh Mohansinh Chauhan*** (supra) cannot come to the aid of the petitioner, as in the said case, the earlier application under Section 311 of the Cr.P.C. seeking recall of PW2 therein, had been filed by the complainant therein. However, the same was withdrawn by the complainant. Within four days thereof, the prosecution filed an application seeking recall of four witnesses, including PW2, contending that these witnesses had earlier deposed due to threats received by them from the accused. It was in those peculiar facts, that the High Court of Bombay upheld the Order of the learned Trial Court therein allowing the application of the prosecution.

29. Similarly, in ***Boby @ Sanjeev Singh*** (supra), the High Court of Madhya Pradesh, in fact, reiterated that successive applications for recall of a witness under Section 311 of the Cr.P.C. are not maintainable. The High Court, however, in the peculiar facts of the said case, upheld the Order of the learned Trial Court therein, allowing the application filed by the PW3 therein

for his reexamination due to the change in circumstances, inasmuch as, post the dismissal of the earlier application, the learned Trial Court therein after holding an inquiry from the then City Superintendent of Police, and after calling the report of handwriting expert from the State Examination, came to the conclusion that the witness who had given his confessional statement was not the same person who was examined as prosecution witness, and he was not the real truthful witness, and that some other person had given evidence in the name of the witness. The said judgment, therefore, also cannot come to the aid of the petitioner.

30. Coming back to the facts of the present case, after the dismissal of the first application filed by the petitioner under Section 311 of the Cr.P.C., the evidence of the petitioner got concluded and was closed on 03.03.2020 by the learned Trial Court. The statement of the respondents under Section 313 of the Cr.P.C. was recorded on 10.12.2021, and as they did not wish to lead any evidence in defence, the Complaint Cases were fixed for final hearing. It is only at this belated stage, that the petitioner filed the application in question. There is absolutely no justification given in the application for the delay in filing the same.

31. The application in question in the present case has been, admittedly, filed at a belated stage. It appears to be an afterthought. It only makes vague averments, and is also bereft of any explanation with regard to such delay. The learned Trial Court has also correctly observed that the petitioner has failed to file such documents with the complaint(s) itself or at an earlier and appropriate stage, even after being in possession of the said documents. There is also no explanation in the application in question with regard to the withdrawal of the earlier application seeking similar relief.

32. It is to be kept in mind that the accused also has a right to an expeditious conclusion of the trial, for mere pendency of a case accusing a person of a criminal offence can attach stigma and cause embarrassment. Reference in this regard can be made to the judgments of the Supreme Court in ***Mohd. Muslim @ Hussain v. State (NCT of Delhi)***, 2023 SCC OnLine SC 352 and ***Ajay Kumar Choudhary v. Union of India***, (2015) 7 SCC 291. The right of the accused cannot be defeated with the complainant choosing to appear as a witness and file documents at his own terms and only when it is convenient to him.

33. It is also to be kept in mind that the proceedings in a complaint case under Section 138 of the NI Act are ordinarily to be conducted as a summary trial. The object of the provision being expeditious disposal of such cases, allowing

the application of the petitioner to place on record the said documents would amount to re-opening the trial and would derail the proceedings which have already been dragged on for over seven years and will defeat the very purpose and object of the provision. Reference in this regard can be made to directions issued by the Supreme Court in its judgment in ***Expeditious Trial of Cases Under Section 138 of NI Act, 1881, In re,*** (2021) 16 SCC 116.

34. Another important consideration which weighs with this Court is that, as held by the Supreme Court in ***P. Mohanraj v. Shah Bros. Ispat (P) Ltd.,*** (2021) 6 SCC 258, an offence under Section 138 of the NI Act is almost in the nature of a civil wrong which has been given criminal overtones. It can be said to be a '*civil sheep*" in a '*criminal wolf*"*s clothing*", as it is the interest of the complainant/victim that is sought to be protected, the larger interest of the State being subsumed in the complainant/victim alone moving a court in cheque bouncing cases. It was further observed that it is really a hybrid provision to enforce payment under a bounced cheque. The Supreme Court has clarified that the gravity of proceedings under Section 138 of the NI Act cannot be equated with an offence under the Indian Penal Code, 1860, or other Criminal Statutes. If that be the nature and intent of the provision, with the complainant running the prosecution rather than the State, Section 311 of the Cr.P.C. should be more strictly applied against the Complainant. If the documents were in the possession and control of the Complainant, and the Complainant still chooses not to file the same at the earliest opportunity (if not with the complaint itself), the same should not be allowed to be filed at such a belated stage. This would protract the Complaint Case(s) endlessly and would defeat the rights of the accused, who, instead of or in addition to civil proceedings, is facing a criminal prosecution. Even under the Commercial Courts Act, 2015, such a belated application to file additional documents in a Commercial Suit, would be liable to be dismissed only on the ground of delay.

35. The learned Trial Court has, therefore, rightly rejected the application in question by the Impugned Order and has also given detailed and cogent reasons while dealing with the same. Therefore, the Impugned Order does not warrant any interference by this Court.

36. In ***Dhruvaram Murlidhar Sonar v. State of Maharashtra*** (2019) 18 SCC 191, the Supreme Court has held as under:

> *"8. It is well settled that exercise of powers under Section 482 CrPC is the exception and not the rule. Under this section, the High Court has inherent powers to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. But the expressions*

"abuse of process of law" or "to secure the ends of justice" do not confer unlimited jurisdiction on the High Court and the alleged abuse of process of law or the ends of justice could only be secured in accordance with law,
including procedural law and not otherwise."

37. I must, however, clarify that as far as the Order dated 18.02.2019 passed by this Court is concerned, the petitioner can always rely upon a certified copy of the same.

38. Keeping in view the above principles and facts of the present case, I find no merit in the present petitions. The same are, accordingly, dismissed. The pending applications are also dismissed as being rendered infructuous.