the expression Director General appearing in Section 132 which, as mentioned above, shall be governed by the definition of the said expression in Section 2(21) of the 1961 Act.

(21) No other point has been argued.

(22) For the reasons mentioned above we hold that the search and seizure operation conducted at the premises of petitioner Nos. 1 and 2 does not suffer from any legal infirmity requiring interference by this Court.

(23) Hence, the writ petition is dismissed.

R. N. R.

Before V. M. Jain, J

BHUSHAN THAPAR—*Petitioner*

versus

M/S GANESH STEEL CORPORATION AND OTHERS—*Respondents*

Crl. Misc. No. 6601-M of 2000

16th November, 2000

Code of Criminal Procedure, 1973—S. 311—Trial Magistrate dismissing application for leading additional evidence—Mere delay in the disposal of the criminal complaint or that in the earlier proceedings the counsel for the complainant had given an undertaking to conclude the evidence within 2 dates could not be taken as ground to disallow the production of additional evidence—Under the changed circumstances, the complainant could not be debarred from producing additional evidence—Petition allowed.

Held, that the application u/s 311 Cr. P. C. filed by the complainant could not be dismissed only on the ground that this would delay the disposal of the criminal complaint or that in the earlier proceedings, the counsel for the complainant had given an undertaking that only 2 opportunities would be required to complete the evidence on behalf of the complainant. The case was still at the stage of defence evidence, when the application u/s 311 Cr. P. C. was filed by the

complainant for production of additional evidence. If that application is allowed, the accused would not suffer in any manner inasmuch as the accused would get opportunity to produce evidence in defence to rebut the evidence led by the complainant by way of additional evidence. There is nothing on the record to show that the complainant is trying to fill up the lacuna left by the complainant nor it would cause any prejudice to the defence of the accused, inasmuch as the case is still at the stage of defence evidence. Under the changed circumsatances, the complainant could not be debarred from producing the additional evidence.

(Para 11)

Lisa Gill, *Advocate for the Petitioner.*

Parveen Kataria, *Advocate for the respondent.*

JUDGMENT

V. M. Jain, J

(1) This is a petition under Section 482 Cr.PC, filed by the petitioner challenging the orders dated, 20th May, 1999 passed by the Judicial Magistrate dismissing the applications of the complainant—petitioner under Section 311, Cr. PC, for additional evidence and the orders, dated 11th November, 1999, passed by the learned Additional Sessions Judge, dismissing the revision petitions filed by the complainant—petitioner, challenging the said orders, dated 20th May, 1999, passed by the Judicial Magistrate.

(2) In the petition, it was alleged by the complainant—petitioner that he had filed criminal complaints under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act) against the accused—Respondent Nos. 1 and 2 in respect of the dishonouring of the various cheques. It was further alleged that the complainant—petitioner had also filed a civil suit against the accused respondents for recovery of the disputed amount. In the said suit, the accused respondents had denied the execution of the receipts and the execution of the cheques. It was alleged that in the criminal complaint, the complainant—petitioner moved an applicaiton, dated 14th March, 1997, under Section 311, Cr. PC, for the specimen writing of Hira Lal, father of the accused—respondent, for the purpose of comparison, to prove that the cheques in question were filled up by Hira Lal, father of the accused-respondent, but subsequently, Hira Lal, had died. It was

alleged that no orders were passed on the application. It was further alleged that in Criminal Misc. 22634-M of 1996, this Court,—*vide* order, dated 7th February, 1997, had given two more opportunities to the petitioner for leading evidence and in pursuance thereof, two more opportunities were given and the evidence of the petitioner was closed by the trial Court,—*vide* order, dated 27th May, 1997. It was further alleged that subsequently, in the civil suit, the petitioner came to know that abovesaid Hira Lal had retired as a Teacher and thereupon, the petitioner summoned the service record of said Hira Lal and after comparison of the handwriting, it came on the record that those cheques were filled up by Hira Lal, father of the accused-respondent. It was alleged that thereupon the petitioner moved applications under Section 311, Cr. PC, for summoning and examination of the Clerk concerned from the office of the Accountant General, Punjab and from the office of the District Education Officer and from the office of the ATO, with the relevant record pertaining to Hira Lal, in order to prove that those cheques were filled up by Hira Lal father of the accused-respondent. It was alleged that the learned trial Magistrate,—*vide* orders, dated 20th May, 1999, wrongly dismissed the said applications of the complainant-petitioner only on the ground that the applications had been filed in order to delay the proceedings. It was alleged that the revision petitions filed by the petitioner before the Sessions Court were also wrongly dismissed,—*vide* orders, dated 11th November, 1999. It was accordingly prayed that the orders passed by the Courts below be set aside and the petitioner be given opportunity to examine the witnesses by way of additional evidence in the interest of justice.

(3) No reply was filed. In fact, learned counsel for respondent Nos. 1 and 2 submitted that no reply was required. However, he had contested the petition.

(4) I have heard learned counsel for the parties and gone through the record carefully.

(5) Learned counsel for the respondents raised a preliminary objection that no revision was competent against the orders dismissing the applications under Section 311, Cr. PC. Reliance was placed on *Amar Nath and others* v. *State of Haryana and others* (1),*and VP Gureja* v. *Jagdish Chander Raheja* (2). However, I find no merit in this submission of the learned counsel.

(1) AIR 1977 S.C. 2185
(2) 1988 (2) R.C.R. 179

(6) In the present case, the revisions filed by the complainant-petitioner before the Sessions Court were dismissed. Dissatisfied with the orders passed by the Courts below, the petitioner had filed the present petition under section 482, CrPC, in this Court. Under these circumstances, even if the revisions before the Sessions Court were not maintainable, yet this Court, in the exercise of its powers under Section 482, Cr. PC, would be competent to consider the legality of the orders passed by the learned trial Magistrate while dismissing the applications under Section 311, Cr. PC. There would be no bar to the exercise of powers under Section 482, CrPC, by this Court, on the facts of the present case. Reliance in this regard may be placed on the law laid down by their Lordships of Supreme Court, in the case reported as *Krishan and anr* v. *Krishnaveni and anr* (3). Even otherwise, if the revision before the Sessions Court was not maintainable, it could not be said that the petitioner had availed the opportunity of filing a second revision, especially when in the present case, the petitioner has filed the present petition under Section 482, Cr. PC, seeking quashment of the orders passed by the Courts below. Thus, I find no merit in the preliminary objection raised before me by the learned counsel for the respondents.

(7) On merits, it was submitted before me by learned counsel for the complainant-petitioner that the production of additional evidence was required to do justice between the parties. It was submitted that since Hira Lal had expired, his specimen writing could not be obtained. It was further submitted that since the complainant-petitioner earlier did not know that Hira Lal was working as a Teacher, the concerned record could not be summoned by the complainant-petitioner at the time when the complainant-petitioner had produced the evidence. It was submitted that the production of additional evidence was necessitated for the purpose of comparison of the admitted hand-writing of Hira Lal with the disputed handwriting on the cheques. It was further submitted that one of the reasons given by the learned trial Magistrate for dismissing the applications of the petitioner under Section 311, Cr. PC, was that in the earlier petition filed in this Court, the complainant-petitioner had given an undertaking to conclude the evidence of the complainant within 2 dates and by filing this application, the complainant-petitioner wanted to by-pass the orders passed by this Court. It was submitted that in fact, the occasion for filing the applications under Section 311, Cr.

(3) J.T. 1997 (1) S.C. 657

PC, for producing the additional evidence arose because the complainant-petitioner earlier did not know that Hira Lal was working as a Teacher and that the production of additional evidence was necessary in the interest of justice. Reliance was placed on *Mohanlal Shamji Soni* v. *Union of India and anr* (4).

(8) After hearing counsel for the parties and perusing the record, in my opinion, the present petition must succeed and the orders passed by the Courts below must be set aside.

(9) As referred to above, the petitioner is the complainant in the Criminal complaint filed by him against the accused-respondents. Under these circumstances, there would be absolutely no occasion for the complainant to delay the disposal of the criminal complaint. It is no doubt true that earlier in pursuance of the orders dated 7th February, 1997 passed by this Court, the complainant had concluded his evidence and the evidence of the complainant was closed on 27th May, 1997. However, subsequently, if the complainant had come to know that Hira Lal, father of the accused-respondent, was working as a Teacher and in order to get his hand-writing compared with the disputed hand-writing on the cheques, if the complainant wanted to examine the additional evidence, in my opinion, the same could not be disallowed merely on the ground that in the earlier petition, the counsel for the petitioner had given an undertaking to conclude the evidence by taking only 2 dates. The said undertaking was given under those circumstances. In the meantime, the circumstances had changed and under the changed circumstances, the complainant could not be debarred from producing the additional evidence, merely because of the earlier undertaking given by counsel for the complainant, if the additional evidence would go to the root of the matter. In the present case, the accused had denied the execution of the receipts and the cheques. In order to prove the writing on the cheques being that of the father of the accused-respondent, in my opinion, the complaintant would be within his rights to produce the additional evidence. Mere delay in disposal of the criminal complaint, in my opinion, on the facts and circumstances of the case, could not be taken as a ground to disallow the production of the additional evidence.

(4) 1991 (3) R.C.R. 182

(10) In 1991(3) Recent Criminal Reports, 182 (supra), it was held by their Lordships of Supreme Court as under :—

> "In order to enable the Court to find out the truth and render a just decision, the salutary provision of Section 540 of the Code (Section 311 of the new Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

It was further held by their Lordships of Supreme Court in the said authority as under :—

> "Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed, by the principle that underlines Section 540, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable result. Further, it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial

or to change the nature of the case against either of the parties."

(11) In view of the law laid down by their Lordships of Supreme Court in the above-mentioned authority, in my opinion, the application under Section 311, CrPC, filed by the complainant—petitioner, could not be dismissed only on the ground that this would delay the disposal of the criminal complaint or that in the earlier proceedings, the counsel for the complainant had given an undertaking that only 2 opportunities would be required to complete the evidence on behalf of the complainant. In the present case, the case was still at the stage of defence evidence when the applications under Section 311, CrPC, were filed by the complainant for production of additional evidence. If those applications are allowed, the accused would not suffer in any manner inasmuch as the accused would get opportunity to produce evidence in defence to rebut the evidence led by the complainant by way of additional evidence. In the present case, there is nothing on the record to show that the complainant is trying to fill up the lacuna left by the complainant nor it would cause any prejudice to the defence of the accused, inasmuch as the case is still at the stage of defence evidence. Earlier the complainant wanted to have the specimen writing of Hira Lal. However, before that could be done, Hira Lal expired. Under these circumstances, the production of additional evidence, in order to have the specimen writing of Hira Lal compared with the disputed writing on the cheques, would certainly be in the interest of justice. The authority *Madanjit Singh v. Baljit Singh* (5), relied upon by learned counsel for the accused-respondents, in my opinion, would have no application to the facts of the present case.

(12) On the facts and circumstances of the present case, in my opinion, it was a fit case where the learned Magistrate should have allowed the complainant to produce the additional evidence in this case. Accordingly, the present petition is allowed, the orders passed by the Courts below are set aside and the complainant—petitioner is allowed to produce additional evidence by summoning the concerned witnesses along with the relevant record.

(13) Since the passing of the final order was stayed by this Court, the office is directed to send a copy of this order to the trial Court immediately, for strict compliance.

R. N. R.

(5) 1997 (2) RCR 808