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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2039-2022
Reserved On: 08.05.2024
Pronounced On: 13.05.2024

GURINDER SINGH

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Manrai, Sr. Advocate with
Ms. Neha, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Nitesh Singhi, Advocate
for the complainant.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the impugned order dated 08.09.2022 passed by learned Judge, Special Court, SAS Nagar, Mohali vide which application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') filed by the prosecution, seeking re-examination of the prosecutrix-PW1 has been allowed, in the case arising out of FIR No.115 dated 02.06.2017 under Sections 420 & 376 of the Indian Penal Code, 1860 (for short 'IPC') lodged at Police Station- City Kharar.

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2. Briefly, facts of the case are that the prosecutrix moved a complaint dated 18.04.2017 to S.S.P., S.A.S Nagar, Mohali, wherein, it was alleged that the petitioner-accused befriended her and thereafter, started a live-in relationship. It was further alleged that the prosecutrix and the petitioner had physical relations while they lived in together, first at Hotel Kenwood and then in a rented flat. During their relationship, the petitioner misused the money of the prosecutrix. When she started asking the petitioner to marry her, the petitioner kept on lingering the matter on one pretext or another and also started visiting the prosecutrix less frequently. Then the prosecutrix got suspicious and when she made an inquiry, she was surprised to find out that the petitioner was already married and had a daughter. When the prosecutrix confronted the petitioner, he threatened to upload her obscene videos recorded by him earlier on the internet and also send the same to her family members. In consequence of the said complaint, the FIR (supra) was registered. During the course of the trial that ensued from the FIR (supra), the prosecution moved an application dated 07.03.2022 under Section 311 Cr.P.C. for re-examination of the prosecutrix which was allowed vide the impugned order dated 08.09.2022. Aggrieved by the same, the petitioner has approached this Court by way of the present revision petition.

3. Learned senior counsel appearing on behalf of the petitioner contends that the evidence of the prosecutrix was recorded on 16.01.2019 and thereafter, she was cross-examined at length and her evidence was concluded on 16.01.2020. The evidence of the prosecution was closed on 12.11.2021 and thereafter, statement of the petitioner-accused was recorded

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under Section 313 Cr.P.C and the case was adjourned for defence evidence on 08.09.2022. He further submits that the accused has already disclosed his defence and now at the fag end of the trial, the prosecution filed an application under Section 311 Cr.P.C in order to unnecessarily delay the trial. It is further contended that the prosecutrix made certain admissions in her cross-examination that are in favour of the case of the petitioner-accused and the sole intention behind seeking her re-examination under Section 311 Cr.P.C. is to somehow take back the benefit accrued in favour of the petitioner which goes against the dictum of fair trial. Learned senior counsel further submits that re-examination of prosecutrix at this stage of the trial would only lead to undue prejudice to the interest of the petitioner-accused. He has relied upon the judgement of Hon'ble Supreme Court in case of 'Rajaram Parsad Yadav vs. State of Bihar and Another, 2013 AIR (SC) (Crl.) 1746' in order to support his contentions. He also submits that the prosecution has filed the said application under Section 311 Cr.P.C. only to fill up the lacuna in its case, which is not permissible under the law.

4. Learned state counsel submits that the prosecution is well within its right to re-examine the prosecutrix for explanation of an ambiguity arising out of her statement as the same is necessary for the proper adjudication of the case and thus, the present petition deserves dismissal.

5. Learned counsel for the complainant submits his power of attorney which is taken on record. He submits that no prejudice has been caused to the petitioner by passing of the impugned order as he shall retain the right to cross-examine the prosecutrix whose re-examination has been

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allowed. Therefore, no interference is warranted by this Court qua the impugned order.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the prosecutrix has admitted in her cross-examination that she did not have any physical contact with the petitioner after 2016 when she found out about him being already married even though she had mentioned in her statement recorded under Section 164 Cr.P.C. that she found out about his second marriage in 2017. The aforesaid fact is pertinent to the case at hand since the FIR (supra) has been lodged in the year 2017 by the prosecutrix and her medical examination was also done in the same year. It further appears that the prosecution duly examined the prosecutrix as PW1 and then she was cross-examined at length. Therefore, this Court is of the opinion that the abovesaid application under Section 311 Cr.P.C. has been moved by the prosecution at a belated stage only to delay the trial.

7. In the present circumstance, it is imperative to examine Section 311 Cr.P.C. The text of the said Section is provided below for reference:-

‘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.’

8. A two Judge Bench of the Hon’ble Supreme Court in **V. N. Patil Vs. K. Niranjana, 2021 (2) R.C.R. (Criminal) 310**, examined the scope of the



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power under Section 311 of Cr.P.C and speaking through Justice Ajay Rastogi, the following was observed:

“Object underlying Section 311 Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 significant expression that occurs is ‘at any stage of enquiry or trial or other proceeding under this Code’. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion.”

9. The Hon’ble Supreme Court in ***Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346*** has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.

10. Further, the Hon’ble Supreme Court in laid down certain principles in the case of **Rajaram Parsad (supra)** that must be borne in mind



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while dealing with an application under Section 311 of Cr.P.C. and made the following observations: -

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*
- b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting*



errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

11. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab, 1982 Cr. LJ 2201*** has held as under:

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the



prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added)."

12. Albeit, the provisions of Section can be invoked at any stage of the trial, the same cannot be done perfunctorily. It is a settled position of law that the power under Section 311 of Cr.P.C. cannot be invoked in a routine manner but the same has to be exercised in exceptional cases, where the Court feels that the re-examination of a witness is essential for the just decision of the case. In the opinion of this Court, the application under Section 311 Cr.P.C. was allowed by the learned trial Court without satisfying the sole criterion as laid down by the Hon'ble Supreme Court in the cases discussed hereinabove. Therefore, this Court finds that the impugned order dated 08.09.2022 passed by learned Judge, Special Court, SAS Nagar, Mohali is in contravention to the settled law and is, hereby, set-aside.

13. However, nothing observed hereinabove shall be construed as a comment on the merits of the case in order to cause prejudice to the case of either party and the learned trial Court is directed to proceed with the trial without being prejudiced by the said observations.



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14. Pending miscellaneous, if any, shall also stand disposed of accordingly.
15. Accordingly, the instant criminal revision stands allowed.

Reserved on :08.05.2024
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[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No