

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Criminal Misc. No. M-10692 of 2014
Date of Decision: 9.10.2015**

Baljit Singh

--Petitioner.

Vs.

Prem Kumar Sharma and another

--Respondents.

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajesh Narang, Advocate
for the petitioner.

Mr. J.K.Chauhan, Advocate
for respondent No.1.

Mr. Maninder Singh, Advocate
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAMESHWAR SINGH MALIK J. (ORAL)

Petitioner, by way of instant petition under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), seeks quashing of order dated 12.3.2014 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Panchkula, whereby application of the petitioner under Section 311 Cr.P.C. was dismissed, having been filed at the fag end of the trial and also with a view to rebut the defence evidence.

Notice of motion was issued.

Learned counsel for the petitioner submits that the learned trial court proceeded on a wholly misconceived approach, while passing the impugned order. He further submits that the object and scope of Section 311 Cr.P.C., have not at all been appreciated by learned trial court in the correct perspective, because of which the impugned order has resulted in serious miscarriage of justice. He also submits that the petitioner ought to have been given sufficient opportunity to put up his case before the court. However, learned trial court failed to appreciate the fact that petitioner was having a genuine cause. The application was moved by the petitioner, so as to get compared the disputed signatures from Handwriting Expert. Had the said evidence been brought on record by allowing the application of the petitioner under Section 311 Cr.P.C, that evidence would have certainly facilitated the learned trial court to arrive at a judicious conclusion. He concluded by submitting that since this crucial aspect of the matter was not properly appreciated by the learned trial court while passing the impugned order, a serious prejudice has been caused to the petitioner. He prays for quashing the impugned order, by allowing the present petition.

On the other hand, learned counsel for the respondents submit that the petitioner has been trying to misuse the process of court. In fact, petitioner himself was the plaintiff in civil litigation, where these very documents were the subject matter of dispute. Petitioner had been simultaneously pursuing civil as well as criminal litigation against the respondents, by misusing the process of law.

They further submit that once the accused have disclosed their defence during the course of criminal trial, after closing the prosecution evidence, thereafter, the petitioner was not entitled to invoke the provisions of Section 311 Cr.P.C. and the impugned order has been rightly passed by the learned trial court. They pray for dismissal of the present petition.

After hearing learned counsel for the parties at considerable length, careful perusal of the record of case and giving anxious consideration to the rival contentions raised, this Court is of the considered opinion that the only irresistible conclusion is that neither the impugned order, as a matter of fact, is an order without jurisdiction, nor it suffers from any patent illegality, thus, calls for no interference at the hands of this Court, exercising its inherent jurisdiction under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

The important question of law that falls for consideration of this Court is, whether the prosecution can be permitted to lead evidence with a view to rebut the defence evidence, by allowing the application of the prosecution under Section 311 Cr.P.C, at the fag end of the trial.

After giving thoughtful consideration to the peculiar facts and circumstances, obtaining in the present case and also the arguments advanced, this Court is of the view that answer to the question posed hereinabove is and has to be answered against the prosecution, holding that learned trial court would be exceeding its jurisdiction, while allowing an application of the prosecution under

Section 311 Cr.P.C. permitting it to lead its evidence with a view to rebut the defence evidence. It is so said because once the prosecution had availed sufficient opportunity to lead its entire evidence and the same is closed to the satisfaction of the prosecution, followed by defence evidence led by the accused, prosecution, as a general rule, would not be entitled to lead its rebuttal evidence. Permitting the prosecution to lead its evidence at the fag end of the trial, after closure of the defence evidence, would amount to fill up serious lacunae in the prosecution case and it would also cause serious prejudice to the rights of the accused.

Another reason for saying so is that, if any serious lacuna is left in the prosecution case, thereby causing a doubt in the prosecution story, benefit thereof would always go only to the accused. Such an important right, if accrued in favour of the accused, cannot be taken away, while granting the prosecution another opportunity, after closure of the defence evidence, to lead its evidence in rebuttal, because neither it is the legislative intent behind the provisions of Section 311 Cr.P.C., nor it could be its object.

In the present case, it is undisputed on record that prosecution evidence had been closed and thereafter, even the defence evidence has been closed. It is also not the argued case on behalf of the petitioner that the documents were not in the knowledge of the petitioner or that the accused in his defence evidence have brought on record some new documents all of a sudden and beyond the expectation of the petitioner. It is also not denied before this Court that petitioner, being the complainant, had already sought two

reports of the Handwriting Experts and present application was a third one to examine the Expert. Once the petitioner was pursuing his civil as well as criminal litigation simultaneously, all the documents were well within his knowledge right from day one. Thus, the learned trial court committed no error of law, while passing the impugned order, declining prayer of the petitioner to lead his rebuttal evidence, therefore, the same deserves to be upheld, for this reason also.

The abovesaid view taken by this Court also finds support from the **King's Bench Division** in the case of **The King Vs. Dora Harris** reported in **1927 (2) KB 587** and also from the following judgments.

1. Jamatraj Kewalji Govani Vs. State of Maharashtra, 1968 AIR (SC) 178 (SC)
2. Mohd. Iqbal Ahmad Vs. State of Andhra Pradesh AIR 1979 SC 677 (SC)
3. Mohanlal Shamji Soni Vs. Union of India and another, 1991 (3) RCR (criminal) 182 (SC)
4. U.T. Of Dadra & Nagar Haveli and another Vs. Fatehsing Mohansinh Chauhan, 2006 (4) RCR (criminal) 113 (SC)
5. Rajender Prasad Vs. Narcotic Cell, Delhi, (1999) 6 SCC 110
6. Raghunath Prasad Vs. State of Rajasthan, 1997 (3) Crimes 86
7. Harnam Singh Vs. Bhushan Metalics Ltd, (2007)

1 RCR (criminal) 992 (P&H)

8. Jarnail Singh Vs. State of Punjab, 1991 (1) RCR (criminal) 110 (P&H)

9. Gangal Singh Vs. State of Haryana 1977 CLR 169 (P&H)

10. Amarjit Singh Vs. State of Punjab (CRR No. 2765 of 2015 decided on 3.8.2015) (P&H)

11. Sahab Singh @ Sabhi Vs. Dharamvir (CRM-M-4649 of 2014 decided on 24.3.2015) (P&H)

12. Jasbir Kaur and others Vs. Mukhtiar Kaur and another, (CRM-M-8821-2015 decided on 20.3.2015) (P&H)

13. Balwant Singh and others Vs. State of Rajasthan, 1986 (2) AICLR 144 (Rajasthan High Court)

14. Prakash Chanda Vs. Central Bureau of Investigation (CrI.M.C. No. 2521/2011 date of decision 14.3.2012) (Delhi High Court).

15. Hasubhai Jivrajbhai Beladia Vs. State of Gujarat, (Special criminal application (quashing) No. 2583/2015 decided on 27.4.2015) (Gujarat High Court)

Following the law laid down by **Tindal C.J.** In Reg. Vs. Frost (1839) 4 St. Tr. (N.S) 86, 386; 9 C. & P. 129, The King's Bench Division in the case of Dora Harris (supra), observed as under:-

A Judge at a criminal trial has the right to call a witness not called by either the prosecution

or the defence, without the consent of either the prosecution or the defence, if in his opinion that course is necessary in the interests of justice, but in order that injustice should not be done to an accused person, a Judge should not call a witness in a criminal trial after the case for the defence is closed, except in a case where a matter arises ex improviso, which no human ingenuity can foresee, on the part of the prisoner.

Rule laid down by Tindal C.J. in Reg. Vs. Frost (1839) 4 St. Tr. (N.S) 86, 386; 9 C. & P. 129, 159 applied.”

The abovesaid law laid down has been consistently followed in the judgments referred to hereinabove by the Hon'ble Supreme Court as well different High Courts, including this Court. In fact, it is the fundamental rule of law that parties to the litigation are expected to lead their best evidence, be it for the prosecution or for the defence, so as to establish its case, by leading the best available evidence.

So far as court is concerned, neither it is empowered nor it is its function to compel either of the parties, i.e. prosecution or the defence, to prove its case from any particular angle or to produce or not to produce any particular witness(s) in support of their respective cases before the Court. On the other hand, duty of the court is not only to do justice but also to ensure that justice seems to have been done.

So far as the object and ambit of Section 311 Cr.P.C. is concerned, it is not the satisfaction of either of the parties which is the decisive factor in deciding the application. The decisive factor is and ought to be the satisfaction of the court, with a view to arrive at a judicious conclusion, that evidence sought to be brought on record with the aid of Section 311 Cr.P.C., is essential for the court to come at a just decision of the case.

No doubt, powers under Section 311 Cr.P.C. are wide enough to ensure that no injustice takes place to either of the parties, however, it is equally true that these powers are to be exercised carefully, with circumspection and judiciously. Such a discretionary power is not supposed to be exercised in an arbitrary manner. The Court is not supposed to receive any evidence in disguise for a *de novo* trial or to change the nature of the case either in favour or against any of the parties to the lis. On a reading of an order passed by a court under Section 311 Cr.P.C., it must appear that the court has exercised its discretion, only as per the requirement of justice, following the established principles of law on the subject, with a view to arrive at an actual truth, enabling the court to come at a judicious conclusion.

Reverting back to the facts and circumstances, obtaining in the present case, this Court is of the considered view that the learned court below was justified on facts as well as in law, while passing the impugned order. Further, during the course of hearing, learned counsel for the petitioner could not point out any jurisdictional error or patent illegality apparent on the record of the case in the

impugned order, so as to enable this Court to interfere with the impugned order, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

No other argument was raised.

In view of what has been discussed hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merits and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

9.10.2015
AK Sharma