

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

**CRM No. M-11000 of 2015
DECIDED ON: APRIL 27, 2015**

RAJNI BALA

.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. D.K Bhatti, Advocate
for the petitioner.

JASPAL SINGH, J.(Oral)

Instant petitioner has been preferred under Section 482 Cr.P.C. seeking setting aside of order dated February 18, 2015 (Annexure P-5) passed by learned Additional Sessions Judge, Jalandhar whereby, an application moved under Section 311 Cr.P.C. read with Section 391 Cr.P.C. was dismissed and petitioner was not allowed to recall PW-4 Dharampal for further examination and for leading additional evidence i.e. by way of summoning Clerk of IGP Zonal alongwith record pertaining to application bearing Bahi No. 780 dated June 29, 2007 with further prayer to allow the application and to recall PW-4 Dharampal for further examination as well as other additional evidence.

2. Before proceedings further to decide the revision on merits, it would be appropriate to reproduce the grounds on which an application under

Section 311 moved by petitioner was dismissed by learned trial Court, which reads as under:

“I have heard both the counsels and also have gone through the contents of the application as well as trial court file. The first argument regarding declaration of PW-4 as hostile is not sustainable as during cross-examination, the witness cannot be confined to specific answers. The narration of some new facts by this PW-4 in cross-examination is no valid ground to invoke Section 311 Cr.P.C. Moreover, the re-calling of PW-4 is not necessary at this stage for the just decision of the case. The Second prayer of the counsel for the applicant regarding proving of the application bearing No. Bahi 780 dated 29.07.2007 is also not tenable as after filing of this application, FIR in question against the respondents was registered which consists same allegations. Proving of that application on record shall not add new facts which were not in the knowledge of applicant/complainant at earlier point of time. There is no valid ground to allow additional evidence at this stage and that even to prove an application which is otherwise based on same set of allegations as given in FIR.”

3. A glance at the aforesaid paragraph transpires that application has been declined firstly on the ground that PW-4 was not got declared hostile by learned Additional Public Prosecutor as he has gone beyond the scope of his examination-in-chief while subjected to cross-examination and has supported the defence version observing that witness cannot be confined to specific answers during his cross-examination and narration of some new facts by PW-4 in cross-examination is no valid ground to invoke Section 311 Cr.P.C. It has further been observed by learned trial Court that recalling of PW-4 is not necessary at this stage for the just decision of the case. Further,

it has been observed that as far as second prayer regarding proving of an application bearing Bahi No. 780 dated June 29, 2007 was concerned the same is not tenable as after filing the said application, FIR in question has been registered which is consisted of similar allegations. Proving of that application on record will not add any new facts, which were not in the knowledge of petitioner at the earlier point of time. But this Court is of the considered view that declining the prayer of petitioner for recalling PW-4 as well as permission to adduce additional evidence is not only legally justified rather is prejudicial to the right of petitioner. PW-4 was associated during investigation of this case simply to prove recovery memo. However, during his cross-examination, he unfolded new facts, which were not narrated by him before police earlier. Learned Additional Public Prosecutor failed to get him declared hostile. The new facts unfolded by him in his cross-examination has gravely prejudiced the petitioner. To bring home the justice, some questions are required to be put to the said witness. Similarly, learned trial Court has also mis-appreciated the fact that an application is sought to be proved by way of additional evidence by petitioner is the same on the basis of which FIR in question has been registered, but the real fact is otherwise.

4. Instant FIR was registered on the basis of complaint dated April 08, 2008 and not on the basis of an application/complaint moved by petitioner to Senior Superintendent of Police bearing Bahi No. 780 dated June 29, 2007 moved to the office of IGP Zonal. A vast power has been given to Court under Section 311 Cr.P.C. to summon material witness or examine any person at any stage of any inquiry, trial or other proceedings

under this Code. The mere fact that an application has been moved at appellate stage is itself no ground to dismiss the application. Moreover, a bare reading of Section 311 Cr.P.C makes it abundantly clear that Court has power to summon anyone as witness or to examine any person in court or to recall and re-examine any person whose evidence has already been recorded. Further, it also makes obligatory on the part of Court to take any of the aforementioned steps if the new evidence appears to be essential for the just decision of the case.

5. Adverting to the facts of the case in hand, PW-4 was examined by investigating agency just to prove recovery of certain articles but he has gone beyond the scope of his examination-in-chief when subjected to cross-examination vide which he has almost smashed the case of prosecution, which is not permissible under law. For any omission or lapse on the part of learned Additional Public Prosecutor at that juncture, complainant/aggrieved person cannot be made to suffer. The court is to impart justice. Accordingly, this court is of the considered view that recalling/further cross-examination of PW-4 would certainly throw some light on the case of prosecution and examination of Clerk of the office of IGP Zonal alongwith application bearing Bahi No. 780 dated June 29, 2007 would also be helpful to the court for proper and judicious adjudication of the real dispute.

6. Accordingly, instant petition is allowed whereby, impugned order dated February 18, 2015 (Annexure P-5) is set aside and application stands allowed. While parting with this order, it would be appropriate to mention that this Court is of the considered view that issuance of notice to

respondents must have delayed the proceedings and caused loss to the respondents. However, if respondents are so aggrieved they are at liberty to challenge this order.

7. A copy of this order be sent to the concerned court for compliance.

APRIL 27, 2015
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(JASPAL SINGH)
JUDGE