

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-12447 of 2014 (O&M).  
Decided on:-July 17, 2015.

Avtar Singh. ....Petitioner.

Versus

State of Punjab and others .....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Amit Saini, Advocate  
for the petitioner.

Mr. P.S. Madahar, AAG, Punjab.

Mr. Jagnahar Singh, Advocate for  
Mr. S.S. Rangi, Advocate  
for respondents No.2 and 4 to 6.

Mr. Salil Kaushal, Advocate  
for respondent No.3.

**HARI PAL VERMA, J.**

The petitioner has filed the present petition under Section 482  
Cr.PC for quashing the order dated 18.1.2014 (Annexure P-4) in FIR No.150  
dated 2.11.2007 under Sections 452, 323, 506, 148, 149 IPC registered at  
Police Station Machhiwara, District Khanna (Section 325 added and Section

323 deleted later on), whereby the Judicial Magistrate 1<sup>st</sup> Class had dismissed the application filed under Section 311 Cr.PC (Annexure P-3) moved by learned APP for the State.

Through the application, the petitioner-complainant seeks summoning of the investigating officer, namely, ASI Gurbachan Singh who was not examined by the trial Court and evidence of the prosecution was closed without considering the report (Annexure P-2) dated 10.7.2013. Vide Annexure P-2, summons were issued to ASI Gurbachan Singh for his appearance on 15.7.2013 and on the said summons, he had reported that he was already bound down for evidence in the Court of Sh. Harpreet Singh, PCS, Judicial Magistrate 1<sup>st</sup> Class in case FIR No.61 of 2009 under Section 379 IPC, Police Station, Kharar for the said date. Accordingly, it was requested that he may be given some other date for appearance.

The application under Section 311 Cr.PC filed by the learned APP for the State refers to an averment that the said witness is a material witness and the investigating officer in the case and, therefore, his presence is essential for the just decision of the case.

The application was opposed by the accused including on the ground of maintainability. Further, the prosecution evidence was closed by order of the Court and at this stage, such application under Section 311 Cr.PC is not maintainable.

However, learned Judicial Magistrate had dismissed the

application 311 Cr.PC on the ground that the evidence as sought to be produced is not a new evidence by observing as under:

*“10. But, in the present case the evidence of the prosecution was closed by order of the court on 15.7.2013 and thereafter the present application has been filed in order to summon ASI Gurbachan Singh. Perusal of the case file shows that the name of ASI Gurbachan Singh stands mentioned at serial No.11 in the list of witnesses. Before closing the evidence the prosecution was given 32 effective opportunities which took more than five and half years to conclude its evidence and resultantly only after finding no further justification the evidence of the prosecution was closed vide order dated 15.7.2013 by the learned Predecessor of this court. Here the reference of Hon’ble Supreme Court’s judgment titled as **Godrej Pacific Tech. Ltd. Versus Computer Joint India Ltd.** (supra) is important which is also relied upon by Ld. APP for the State in order to have the order passed in favour of the State by way of present application. But in the aforesaid judgment the Hon’ble Supreme Court while considering the scope of Section 311 of Cr.P.C. has observed in paragraph No.9 as under:-*

*“Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Officer.”*

*Now reverting back to the present case, had it been the ground of the application that a new evidence has come in the knowledge of the prosecution which is very much essential to the just decision of the case then things would have been*

*different but in my considered view the evidence as sought to be produced by way of present application is not a new evidence. The name of the witness as sought to be summoned in the present case has already been depicted in the list of witnesses but he has not been examined by the prosecution even after availing 32 effective opportunities and consequently the evidence of the prosecution was closed. Thus, as a result of above discussion, I hereby dismissed the present application on the ground that the evidence as sought to be produced is not a new evidence and was already in the knowledge of the prosecution.*

*Now to come up on 31.1.2014 for recording statement of accused under Section 313 Cr.P.C.*

*Pronounced in open court*

*(Raj Karan)*

*Dated:18.1.2014      Judicial Magistrate 1<sup>st</sup> Class, Samrala.”*

I have heard learned counsel for the parties.

Learned counsel for the petitioner contends that during the course of prosecution evidence for examining the investigating officer, the trial Court had issued summons which were served upon him but the investigating officer did not come present. Thereafter, the bailable warrants of the investigating officer were issued, for 15.7.2013. The learned trial Court had closed the prosecution evidence without appreciating the fact that the investigating officer was bound down for in some other case at Kharar, for which the report was submitted to the trial Court. He has further submitted that various jimni orders as referred in this petition nowhere

suggest that theailable warrants of the investigating officer Gurbachan Singh were ever served upon him.

Learned counsel for the petitioner further contends that the trial Court should have secured the presence of the investigating officer by adhering to the provisions enshrined in Chapter VI of the Code of Criminal Procedure, but without following the said procedure, the trial Court had closed the prosecution evidence vide order dated 15.7.2013. The said order nowhere deals with the fact that the investigating officer was bound down in another case.

On the other hand, learned counsel for the respondents-accused have contended that as many as 32 effective opportunities were granted to the prosecution which took more than 5½ years to conclude its evidence and it was only after finding no further justification, the evidence of the prosecution was closed vide order dated 15.7.2013.

Considering the fact that the investigating officer is one of the important witnesses, but he being not available on 15.7.2013 as he was bound down in some other case at Kharar Court, the impugned order dated 18.1.2014 dismissing the application under Section 311 Cr.PC is not justified. No doubt, as many as 32 effective opportunities have been granted and it is as a consequence thereof that the evidence of the prosecution was closed, but this Court finds that non-appearance of ASI Gurbachan Singh as investigating officer in the case is not intentional, rather, he was justified for

the reason that he was bound down in other case at Kharar.

Accordingly, I find substance in the present petition and set aside the order dated 18.1.2014 (Annexure P-4) passed by the trial Court.

Consequently, accepting the present petition, the application (Annexure P-3) filed by the learned APP for the State is allowed and the trial Court is directed to afford one more opportunity to the prosecution by summoning the aforesaid witness i.e. ASI Gurbachan Singh and to allow him to be examined in the case.

**(HARI PAL VERMA)**  
**JUDGE**

**July 17, 2015**  
'Yag Dutt'