

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CRM-M-18295-2015
Date of decision:25.8.2015**

Rajiv Sood

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Present: Mr.S.S.Sarwara, Advocate for the petitioner.
Mr. Daljeet Singh Virk, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 4.5.2015 (Annexure P-4) passed by the learned Special Judge, Fatehgarh Sahib, whereby application of the petitioner under Section 311 of the Code of Criminal Procedure ('Cr.P.C.') was dismissed, petitioner has approached this Court by way of instant petition under Section 482 Cr.P.C., for quashing of the impugned order.

Notice of motion was issued. However, no reply has been filed on behalf of the respondent-State of Punjab.

Learned counsel for the petitioner submits that the learned trial Court fell in serious error of law, while passing the impugned order, which is palpably illegal. He further submits that the case pertains to offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 which contains stringent provisions. Petitioner being the accused, sufficient opportunities should have been granted to him to defend himself.

Petitioner, by moving application under Section 311 Cr.P.C., was seeking recalling of PW-5 Inspector Daljit Singh for his further cross-examination as some of the important questions could not be put to him, because of sheer inadvertent mistake on the part of the counsel. He further submits that no prejudice was going to be caused to the prosecution in recalling PW-5. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that sufficient opportunities had already been granted to the petitioner to defend himself. PW-5 Inspector Daljit Singh was cross-examined by the petitioner at length. Nothing more was left to be cross-examined. Petitioner was trying to delay the trial. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the present case, referred to hereinabove, the present one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A bare perusal of the impugned order would show that the learned Judge did not appreciate the true facts of the case as well as the object and true import of the legislative intent for providing Section 311 Cr.P.C. on the statute book. It is the settled proposition of law that every accused must get full opportunity to defend himself. In this regard, it is also the duty of the Court not to allow the technicalities and super technicalities to stand in the way, between the accused and the substantial justice.

It is also pertinent to note here that justice not only be done but it should also seem to have been done. This age old and golden principle of criminal jurisprudence could not get the due attention of the learned trial Judge, while passing the impugned order and the same cannot be sustained for this reason also.

True import as well as the object of Section 311 Cr.P.C. could not be appreciated by the learned trial Court, in the correct perspective, thus, the impugned order has resulted in miscarriage of justice and the same cannot be sustained for this reason as well. It is so said because recalling of PW-5 for further cross-examination was not going to cause any prejudice to the prosecution.

The above-said view taken by this Court also finds support from the following judgments:-

- 1. Rajaram Prasad Yadav Vs. State of Bihar and anr., 2013 (14) SCC 461;**
- 2. Jamatraj Kewalji Govani v. State of Maharashtra, AIR 1968 SC 178;**
- 3. Mohanlal Shamji Soni Vs. Union of India and anr., 1991 SCC (Crl.) 595;**
- 4. U.T. of Dadra and Nagar Haveli and anr. Vs. Fatehsinh Mohansinh Chauhan, 2006 (7) SCC 529;**
- 5. Iddar and ors. Vs. Aabida and anr., 2008 (1) SCC (Crl.) 22;**
- 6. P. Sanjeeva Rao Vs. State of Andhra Pradesh, 2012 (7) SCC 56;**
- 7. Sheikh Jumman Vs. State of Maharashtra, 2012 (12) SCC 486;**

8. Natasha Singh Vs. CBI (State), 2013 (5) SCC 741 and

**9. Ranjit Singh v. Boota Singh (CRM-M-2860-2015),
decided on 4.8.2015 (P&H).**

The relevant observations made by the Hon'ble Supreme Court in para 15, 16 and 20 of its judgment in **Natasha Singh's** case (supra), which can be gainfully followed in the present case, read as under:-

'The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of 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 opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Cr.P.C. 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 great caution and circumspection. The very use of words such as 'any Court', 'at any stage', or 'or any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just

decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr., AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors., AIR 2004 SC 3114; Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors., AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.), (2007) 2 SCC 258; Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I., (2012) 3 SCC 387) 16.

The instant case is required to be examined in light of the aforesaid settled legal propositions.

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Undoubtedly, an application filed under Section 311 Cr.P.C. must be allowed if fresh evidence is being produced to facilitate a just decision, however, in the instant case, the learned Trial Court prejudged the evidence of the witness sought to be examined by the appellant, and thereby cause grave and material prejudice to the 14 Page 15 appellant as regards her defence, which tantamounts to a flagrant violation

of the principles of law governing the production of such evidence in keeping with the provisions of Section 311 Cr.P.C. By doing so, the Trial Court reached the conclusion that the production of such evidence by the defence was not essential to facilitate a just decision of the case. Such an assumption is wholly misconceived, and is not tenable in law as the accused has every right to adduce evidence in rebuttal of the evidence brought on record by the prosecution. The court must examine whether such additional evidence is necessary to facilitate a just and proper decision of the case. The examination of the hand-writing expert may therefore be necessary to rebut the evidence of Rabi Lal Thapa (PW.40), and a request made for his examination ought not to have been rejected on the sole ground that the opinion of the hand-writing expert would not be conclusive. In such a situation, the only issue that ought to have been considered by the courts below, is whether the evidence proposed to be adduced was relevant or not. Identical is the position regarding the panchnama witness, and the court is justified in weighing evidence, only and only once the same has been laid before it and brought on record. Mr. B.B. Sharma, thus, may be in a position to depose with respect to whether 15 Page 16 the documents alleged to have been found, or to have been seized, were actually recovered or not, and therefore, from the point of view of the appellant, his examination might prove to be essential and imperative for facilitating a just decision of the case.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon’ble Supreme Court, different High Courts including this Court, in the cases referred to hereinabove, it is unhesitatingly held that the learned trial Judge has committed serious error of law, while passing the impugned order, because of which the same cannot be sustained.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noticed above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, instant petition deserves to be allowed.

As a result of what has been discussed hereinabove, the impugned order dated 4.5.2015 (Annexure P-4) passed by the learned Special Judge, Fatehgarh Sahib, is hereby set aside. The application moved by the petitioner under Section 311 stands allowed. The learned trial Court is directed to recall PW-5 Inspector Daljit Singh for his further cross-examination, by the learned counsel for the petitioner-accused.

Resultantly, with the above-said observations made and directions issued, the present petition stands allowed, however, with no order as to costs.

25.8.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE