

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

**Crl. Misc. No. M-1904 of 2015
Date of Decision: 26.11.2015.**

Mehboob Hasan

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mohd. Salim, Advocate
for the petitioner.

Ms. Mahima, AAG, Haryana.

None for respondents No. 2 to 6.

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SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the orders dated 16.12.2011 (Annexure P-5) and 23.1.2012 (Annexure P-7).

Learned counsel for the petitioner has submitted that Firdous wife of the complainant-petitioner was abducted by the accused. Although, statement of Firdous was recorded under Section 161 Cr.P.C. during investigation but due to inadvertence, she was not cited as a witness in the list of witnesses. In fact, Firdous was the victim and her statement during trial was necessary for the just decision of the case.

Learned State counsel, on the other hand, has submitted that statement of Firdous was recorded during investigation under Section 161 Cr.P.C. but due to inadvertence,

her name could not be mentioned in the list of witnesses. Since Firdous was the victim, her statement during trial was necessary for the just decision of the case.

None has appeared on behalf of respondents No. 2 to 6.

Section 311 Cr.P.C. reads as under:-

“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.”

Thus, in view of the above provision, the Court may at any time recall a witness if it serves the ends of justice.

Prosecution story, in brief, is that complainant-petitioner Mehboob Hasan had received information on 6.11.2005 that the accused armed with weapons had entered his house at about 3.00 P.M. and had abducted his wife at a gun point. Valuable household articles and ornaments had been taken away by the accused. Complainant-petitioner returned home from Delhi and found that household articles worth ₹ 4,00,000/- had been stolen. Wife of the complainant-petitioner recovered by the police on the same day. Wife of the complainant-petitioner was got medico-legally examined. The

medico-legal report of Firdous, wife of the complainant-petitioner, is Annexure P-8.

During the course of arguments, it has transpired that statement of Firdous was recorded during investigation under Section 161 Cr.P.C. but it appears that due to inadvertence she had not been cited as a witness. Since in the present case, it is the case of prosecution that Firdous, wife of the petitioner, had been abducted, statement of Firdous would be material for the just decision of the case. In the facts and circumstances of the present case, the Trial Court vide the impugned order dated 16.12.2011 (Annexure P-5) erred in dismissing the application moved by the petitioner under Section 311 Cr.P.C. The Court of Revision further erred in upholding the order passed by the Trial Court vide order dated 23.1.2012 (Annexure P-7).

Accordingly, this petition is allowed. Impugned orders dated 16.12.2011 (Annexure P-5) and 23.1.2012 (Annexure P-7) are set aside. Consequently, application (Annexure P-4) moved by the petitioner under Section 311 Cr.P.C. for summoning Firdous as prosecution witness, is allowed.

**(SABINA)
JUDGE**

November 26, 2015
Gurpreet