

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

CRM-M No.23054 of 2014

Decided on: 21.04.2015

Ishwar Singh

. . . Petitioner

Versus

State of Punjab & others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Tapan Yadav, Advocate
for the petitioner.

Mr. Pardeep Prakash Chahar, D.A.G., Haryana.

Mr. Rajesh Lamba, Advocate
for the respondent No.2.

RAJ MOHAN SINGH, J. (Oral)

In this petition challenge has been made to order dated 03.06.2014, whereby prayer of the petitioner for production of call details between the accused Anil and Shakuntala and photograph proceedings done by Investigating Officer have been declined while exercising power under Section 311 Cr.P.C. The prayer has been declined primarily on the ground that application under Section 311 Cr.P.C. was allowed by the trial Court on 04.01.2014 and in view thereof second application with the aforesaid prayer was held not legally sustainable as it would cause unnecessarily

harassment to the accused were in custody since 29.07.2012. It was held that the trial is at the fag end and as such, no special powers can be exercised under Section 311 Cr.P.C.

Learned counsel for the petitioner submits that it is a case of error apparent on record rather to be a lacuna. The documents sought to be produced are already on the judicial file and it is only in the re-examination of Investigating Officer, the same would be proved. No prejudice is going to be caused to the accused in view of the fact that no fresh document is to be tendered except the one which are already on record. Learned counsel further states that powers under Section 311 Cr.P.C. are wide enough to cover such eventuality.

On the other hand, prayer has been vehemently opposed by the learned counsel for the respondent-accused.

It has been contended that the second application under Section 311 Cr.P.C. cannot be entertained at the fag end particularly when first application was allowed on 04.01.2014 and the prosecution cannot be allowed to fill in lacuna at the an intermittent stage. Learned counsel further states that the application is discrepant and does not disclose as to how the proposed documents are relevant.

I have considered submissions and rival submissions of the parties.

The object of application under Section 311 Cr.P.C. is to prevent failure of justice on account of mistake of either of the

party to bring on record valuable evidence or leaving ambiguity in the statement of the witness. It is not only prerogative of Court, but also duty cast upon the Court to examine such a witness as it considers necessary for doing justice between the parties.

It is also equally settled principle of law that the Court at any time in inquiry or proceedings can summon any person as 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 be essential for just decision, if in the opinion of the Court, such evidence is just and appropriate for decision of the case. The Court would become *functus-officio* only with the pronouncement of judgment otherwise before pronouncement of such judgment, Court has ample powers to summon any person as a witness at any stage of inquiry, trial or proceedings if such evidence is just and appropriate decision of the case.

The powers of the Court under Section 311 Cr.P.C. cannot be guided by any restrictive mechanism, if in the opinion of the Court, it will help in arriving at a correct decision of the case.

The under lining principles have been well defined in judgment of Apex Court in **'Hanuman Ram Versus The State of Rajasthan and Ors.' AIR 2009 (SC) page 69.**

So far as the objection on behalf of respondent with regard to second application is concerned, learned counsel for the

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petitioner has pointed out that at the time when first application was allowed, even the statement of PW-12 was not recorded. PW-12 was examined only on 23.04.2013.

In view of aforesaid, it would be in all fairness to the prosecution to allow the petitioner to re-examine the investigating officer and thereafter, the respondent would be at liberty to cross-examine him to the extent of proving the aforesaid documents.

Resultantly, this petition is allowed. Necessary proceedings to follow.

Disposed of.

[Raj Mohan Singh]
Judge

21.04.2015
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