

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

CRM-M No.26228 of 2015.

Date of Decision: 07.08.2015.

Yakub Ali

....Petitioner.

VERSUS

State of Haryana and another

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. G.C. Shahpuri, Advocate for the petitioner.

SNEH PRASHAR, J.

A petition under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") was filed by the petitioner for quashing of order dated 23.07.2015 passed by learned Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, vide which the application under Section 311 Cr.P.C. filed by complainant-respndent No.2 was allowed.

The petitioner alongwith co-accused was facing trial in case First Information Report No.179 dated 22.09.2010 under Sections 323/324/506 read with Section 34 of the Indian Penal Code (for short, "I.P.C.") registered at Police Station Sadar, Yamuna Nagar. When the case was at the stage of defence evidence, complainant-respondent No.2 filed an

application invoking the provisions of section 311 Cr.P.C. for tendering by way of additional evidence two documents i.e. (i) report of local commissioner dated 21.09.2010 and (ii) certified copy of order dated 24.09.2010 passed by Civil Judge, Jagadhri.

The application was resisted by the petitioner and his co-accused. Considering the submissions made by the counsel for the parties, the application was allowed by learned Judicial Magistrate Ist Class, Jagadhri vide order dated 23.07.2015.

The submissions made by Mr. G.C. Shahpuri, learned counsel representing the petitioner have been heard.

Learned counsel for the petitioner argued that the application for producing the documents by way of additional evidence was filed by the complainant and not by the Additional Public Prosecutor who was the master of the case. It was also filed when the case had reached at the stage of defence evidence and arguments. The proposed documents were very much in the knowledge of the complainant from the very beginning but he never opted to produce the same at the appropriate stage. It was only to fill in the lacuna in the case that he wants to produce them by way of additional evidence. Learned counsel relied upon *Narinder Singh vs. State of Punjab & Ors., 2010(3) Law Herald 2450.*

There appears to be no force in the argument of learned counsel for the petitioner. For ready reference section 311 Cr.P.C. is reproduced hereunder:-

“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.”

The above provision clearly postulates that at any stage of an enquiry, trial or other proceedings under Cr.P.C. the Court is empowered to summon any person as witness or recall or re-examine any person already examined if it is necessary for the just decision of the case. In ***Godrej Pacific Tech Ltd. Vs. Computer Joint India Ltd.***, 2008(3) R.C.R. (Criminal) 897 it was laid down by the Apex Court that the object underlying Section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case.

Dealing with similar objections raised by the petitioner, the findings of learned trial court were as under:-

“The first objection raised by the defence counsel is liable to be rejected as Section 311 Cr.P.C. does not put any bar as to the stage at which application under Section 311 Cr.P.C. can be moved. Moreover, the case is still at the stage of defence evidence and the accused will have ample opportunity to rebut the evidence sought to be produced.

*The second contention raised by the defence counsel is also liable to be rejected as by way of this application it cannot be said that the prosecution is trying to fill the lacuna in its case. In ***Rajinder Prasad Vs. The Narcotic Cell through its Officer Incharge Delhi***, while dealing with the argument*

that Section 311 Cr.P.C. cannot be invoked to fill the lacuna in the prosecution case explained that lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is to do justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.

In the present case it cannot be said that the prosecution is intending to fill the lacuna in its case by way of this application. The third contention raised by the defence counsel is also liable to be rejected as with the evolution in criminal law, the right of the complainant to participate in criminal proceeding has been legally recognized and the complainant has right to file any application in the criminal proceedings.

The documents which the complainant proposed to produce by way of additional evidence were not such which could be fabricated. As observed by learned trial court they were also necessary and important for proper and complete adjudication of the case.

Thus, finding no ground for interference in the order dated 23.07.2015 passed by learned trial court, the present petition is dismissed.

(SNEH PRASHAR)
JUDGE

07.08.2015
jitender