

243

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

**CRM-M No.31475 of 2014  
Date of Decision: 01.04.2015**

**AMAN KUMAR**

**.....Petitioner**

**Vs**

**STATE OF HARYANA**

**.....Respondent**

**CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Bikram Chaudhary, Advocate  
for the petitioner.

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

\*\*\*\*

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

**RAJ MOHAN SINGH, J.**

[1]. In this petition filed under Section 482 Cr.P.C., petitioner has prayed for quashing of order dated 03.09.2014 (Annexure P-6) passed by Additional Sessions Judge, Kaithal, whereby application under Section 311 Cr.P.C., filed by petitioner for recalling prosecution witness PW-5-Rameshwar Dass, Head Teacher, G.P.S. Sanch for further cross-examination was declined.

[2]. Petitioner alleged that FIR No.86 dated 14.04.2014 under Sections 363 and 366 IPC was registered against him by father of Paramjeet namely Ishwar Singh on the ground that Paramjeet is aged about 18 years and Jitender @ Challu son of Fateh Singh has

enticed her away. The challan was presented against the petitioner under Sections 363/366/366-A IPC and charges were framed under Sections 363/366 IPC.

[3]. The prosecution examined prosecutrix as PW-1 and complainant appeared as PW-4. In order to prove the age of the prosecutrix, Rameshwar Dass, Head Teacher, G.P.S. Sanch was examined as P-5, who at the time of deposition tendered documents Exs.PE/1 and PE/2 which were not part of challan. The petitioner was taken by surprise. Those documents were not handed over prior in time and petitioner could not comprehend the import of said documents and could not prepare the valid ground to shatter veracity of these documents.

[4]. The documents in question were in the nature of entry of Paramjeet in the school with declaration of complainant and letter for admission in school. Perusal of these documents (Annexures P-3 and P-4) collectively *prima facie* show the name of student as Paramjit, date of birth 10.10.1999, father's name as Ishwar Singh, mother's name as Mewa Devi and very interestingly in the letter of admission in school, recital has been made that the applicant certify that "this letter is for admission of my son Paramjit in your school."

[5]. The petitioner moved an application dated 03.09.2014 for recalling of PW-5-Rameshwar Dass, Head Teacher, G.P.S. Sanch for his further cross-examination/re-examination on the ground that the documents Exs. PE/1 and PE/2 which were tendered by the

witness were not part of prosecution evidence in challan and, therefore, petitioner was taken by surprise and he could not effectively cross-examine the witness. The application was opposed by the State by asserting that no useful purpose in recalling the witness would be served and the application is just a tool to misuse the process of law.

[6]. Additional Sessions Judge, Kaithal dismissed the application by observing that the witness was cross-examined after the documents were produced before the Court in the presence of defence counsel and, therefore, with production of these documents by the official witness, recalling him for further cross-examination would not serve any purpose and Additional Sessions Judge dismissed the application vide order dated 03.09.2014.

[7]. It is settled principle of law that the Court at any point of time of inquiry, trial or proceeding can summon any person as witness or examine any person in attendance though not summoned as witness or recall and re-examine any person already examined if in the opinion of the Court such evidence is just and appropriate for decision of the case. Under Section 311, Court has ample powers to summon any person as a witness at any stage of inquiry, trial or proceeding if such evidence is thought appropriate by the Court to be just and helpful in deciding the case in an effective manner.

[8]. The Court would become *functus officio* only with the pronouncement of the judgment, otherwise before pronouncement of

judgment, the powers of the Court cannot be guided by any restrictive mechanism if evidence sought to be adduced is in the opinion of the Court would serve as a helpful tool in arriving at correct decision of the case.

[9]. The object underlying 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 an ambiguity in the statements of witnesses. It is not only the prerogative of the Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties.

[10]. The consideration before the Court is to visualise as a determinative factor that whether the evidence in question is essential for just decision of the case or not?

The underlying principles were well defined in **Hanuman Ram v. State of Rajasthan and ors., AIR 2009 SC 69.**

[11]. In a criminal trial fair opportunity is required to be given to the accused to prove his innocence. This is the object of every fair trial. In **Hoffman Andreas v. Inspect of Customs, Amritsar (2000) 10 SCC 430** the Apex Court emphasized “the Court could adopt latitude and an liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible.”

[12]. Looking to the facts of this case, it can be found that since the documents were not made part of the challan and were sought to be exhibited in the evidence of PW-5. Prior knowledge of these documents to the petitioner is subjective thing and even if copies of these documents were handed over to the petitioner on the date of cross-examination, it cannot be said that fair opportunity was given to the petitioner to prepare his case for the purpose of cross-examination of the witness in whose statement these documents were tendered for the first time without citing these documents in the challan.

[13]. Since the case involves the offence under Sections 363, 366, 366-A IPC, therefore factors like age of the prosecutrix may play important role in helm of affairs. The trial Court is required to give fair opportunity to the accused in the matter of evidence. The application under Section 311 Cr.P.C., is found to be filed without any loss of time. The reply (Annexure P-5) reveals that the application under Section 311 Cr.P.C., for recalling of the witness was filed on 03.09.2014. The witness was examined on 16.08.2014. On this score also it cannot be observed that petitioner was playing any delaying tactics to prolong trial in any manner.

[14]. The petitioner should not have been made victim of procedural lapses of any kind.

[15]. In view of facts and circumstances of the case it would be in all fairness to the prosecution to allow petitioner to further cross-

examine PW-5 Rameshwar Dass, Head Teacher, G.P.S. Sanch particularly when statement (Annexure P-2) made by him only reveals cross-examination in respect of Ex.PE/1 only. The statement does not reveal any cross-examination on the affidavit Ex.PE/2. Therefore it would just and expedient to give fair opportunity to the petitioner to further cross-examine PW-5 in the interest of justice and fair play.

[16]. In view of aforesaid, impugned order dated 03.09.2014 passed by Additional Sessions Judge, Kaithal (Annexure P-6) is quashed. Trial Court is directed to take all remedial steps, facilitating the petitioner to cross-examine PW-5 again in accordance with law.

[17]. Petition is allowed in the aforesaid manner.

April 01, 2015

*Atik*

**(RAJ MOHAN SINGH)  
JUDGE**