

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

**Crl. Misc. No. M-34692 of 2013  
Date of Decision: 20.02.2015.**

Vandana Tripathi and others .....Petitioners

Vs.

State of Haryana and another .....Respondents

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr. Salil Sablok, Advocate  
for the petitioners.

Mr. Rajiv Doon, AAG, Haryana.

None for respondent No. 2.

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**SABINA, J.**

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) seeking quashing of the order dated 23.9.2013 (Annexure P-8), whereby, in revision the order dated 22.8.2013 (Annexure P-7), was set aside.

Learned counsel for the petitioners has submitted that application under Section 311 Cr.P.C. had been moved by the prosecution for examining the witness Major P. Tiwari with a view to delay the proceedings. In fact, prosecution had availed numerous opportunities and had, thereafter, closed its evidence. Complainant had been pursuing the case through her counsel. Earlier an application was moved by the prosecution under Section 311 Cr.P.C. for summoning Surinder Singh, Clerk and on

14.1.2013, when the case was listed for final arguments. The said application was not opposed by the accused and was allowed. Thereafter, another application under Section 311 Cr.P.C. was moved by the prosecution to summon Dr. Suman Kochhar and Dr. Dasari Harish. The said application was dismissed by the Trial Court vide order dated 31.1.2013 (Annexure P-3) on the ground that the prosecution was trying to fill up the lacuna left in its case. Revision filed against the order Annexure P-3, was partly allowed vide order dated 1.3.2013 (Annexure P-4). Trial Court was directed to allow two effective opportunities to the prosecution to examine Dr. S.S.Sandhu and in case the said witness was not available, prosecution was given liberty to examine some other doctor who could identify the signatures of Dr. S.S.Sandhu on MLR dated 10.3.2007. Thereafter, the present application under Section 311 Cr.P.C., had been moved by the prosecution seeking permission to examine Major P. Tiwari as a witness on the ground that the said witness had also witnessed the occurrence. Application under Section 311 Cr.P.C. was dismissed by the Trial Court vide order dated 22.8.2013 (Annexure P-7). However, the Court of Revision fell in error while allowing the application vide impugned order dated 23.9.2013 (Annexure P-8) on erroneous considerations. Learned counsel for the petitioners has further submitted that the statement of Major P. Tiwari was not recorded during investigation nor he was cited as a witness.

Learned State counsel, on the other hand, has opposed the petition.

None has appeared on behalf of respondent No. 2.

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 has ample power to summon any witness if it serves the ends of justice.

In the present case, petitioners are facing trial in FIR No. 130 dated 17.4.2007 under Section 325, 34 of the Indian Penal Code, 1860, registered at Police Station Sector-5, Panchkula. Respondent No. 2-complainant was examined during trial. It has been noticed by the Trial Court that the complainant herself was appearing on each date along with her counsel and was pursuing the case. Prosecution had availed 18 effective opportunities to conclude its evidence.

First application moved by the prosecution under Section 311 Cr.P.C., was allowed as it was not contested by the accused. Thereafter, another application under Section 311 Cr.P.C., was moved by the prosecution which was partly allowed by the Court of Revision. Now the application in question has been moved by the prosecution under Section 311 Cr.P.C. to

summon the eye witness Major P. Tiwari. A perusal of the impugned order dated 23.9.2013 (Annexure P-8) reveals that statement of Major P. Tiwari was not recorded during investigation. Although, it was the case of the complainant from the beginning that she had been rescued by her mother Kamla Tiwari and nephew Major P.Tiwari from the clutches of the accused but the statement of Major P. Tiwari was not recorded during investigation. Apparently, due to this reason, Major P. Tiwari was not cited as a witness during trial. Now the trial is ripe for arguments and it appears that the application under Section 311 Cr.P.C. for summoning Major P. Tiwari as a witness, was moved with a view to fill up the lacuna in the prosecution case. In fact, the Trial Court had rightly dismissed the application moved by the prosecution to summon Major P. Tiwari as a prosecution witness. Charges were framed on 3.12.2007 by the Trial Court and the prosecution concluded its evidence on 30.10.2012. There is no explanation as to why the witness, sought to be summoned, was not sought to be summoned when first application under Section 311 Cr.P.C., was moved by the prosecution. Although, the Court has ample power to summon any person as witness under Section 311 Cr.P.C. but prosecution cannot be allowed to fill up the lacuna in its case by resorting to Section 311 Cr.P.C.

Accordingly, this application is allowed. Impugned order dated 23.9.2013 (Annexure P-8) is set aside.

**(SABINA)  
JUDGE**

**February 20, 2015**  
***Gurpreet***