

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

**CRM No.M-4009 of 2010(O&M)
Date of decision: 29.7.2015**

Sanjay Singla

.....Petitioner(s)

Versus

State of U.T. Chandigarh

.....Respondent(s)

CORAM:- HON'BLE MR.JUSTICE DARSHAN SINGH

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Present: Mr. A.K. Khunger, Advocate for the petitioner(s).

Mr. J.S. Chahal, Additional Public Prosecutor for U.T.
Chandigarh.

DARSHAN SINGH, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Cr.P.C') for quashing the order dated 17.11.2009 passed by the learned Judicial Magistrate, 1st Class, Chandigarh vide which the application of the prosecution under Section 311 Cr.P.C.for summoning Ravi, Jagar Ram and Manjit Singh in the additional evidence of the prosecution was allowed.

2. Nitin Khanna, the son of Satish Khanna, has died as a result of injuries suffered in the road side accident which occurred on 11.10.2006 due to alleged rash and negligent driving of Maruti Car No.DL-8C-5093 by the petitioner.

3. During the trial, the prosecution moved an application under Section 311 Cr.P.C for summoning Ravi, Jagar Ram and Manjit Singh as the prosecution witnesses alleging therein that Satish Khanna, the father of the deceased, has told the name of said witnesses to the Investigating Officer. However, later on he met with an accident. His wife fell ill. So, he could not pursue the case properly with the Investigating Officer. The said Investigating Officer also did not properly investigate the case. The examination of the aforesaid witnesses is essential for the just decision of the case.

4. The said application was contested by the present petitioner on the plea that the said application is belated one. The witnesses now sought to be examined were never cited as a witness by the prosecution nor their statements have been recorded during the investigation by the police. The father of the deceased has not disclosed when and how these witnesses came in his contact. The name of these witnesses were not even disclosed in the petition filed under the provisions of the Motor Vehicles Act. The said witnesses are fictitious. Complainant Sarju has not supported the prosecution case and it was prayed that the application be dismissed.

5. On appreciating the contentions raised by the learned counsel for the parties, the learned trial court vide impugned order dated 17.11.2009 allowed the said application and the aforesaid witnesses were ordered to be summoned in order to depose.

6. Aggrieved with the aforesaid order, the present petition has been preferred.

7. Shri A.K.Khungar, Advocate, learned counsel for the petitioner, contended that as per the allegations in the FIR and the investigation carried out by the police only Sarju was the eye witness of the occurrence but he has not supported the prosecution case during his examination before the learned trial court. He contended that the witnesses now sought to be examined were never cited by the prosecution nor they were examined during the examination of the case. It is also not known as to how these witnesses came into contact with the father of the deceased. The plea raised in the application that the father of the deceased met with an accident and could not pursue the case is without any substance. He contended that this application has only been filed after about three years of the occurrence just to fill up the lacuna in the prosecution case as main witness Sarju has not supported the prosecution case. Thus, he contended that the impugned order is illegal.

8. On the other hand, the learned Additional Public Prosecutor contended that the additional evidence can be allowed at any stage. Mere delay in filing the application is no ground to decline it. Similarly, he contended that non recording of the statement of a witness under Section 161 Cr.P.C. is not a bar to summon such a witness under Section 311 Cr.P.C. He contended that the aforesaid witnesses are the witnesses of the occurrence. Their examination is essential for the just decision of the case. So, there is no infirmity in the impugned order.

9. I have duly considered the aforesaid contentions.

10. Section 311 Cr.P.C. provides that the Court may at any stage of trial summon any person as a witness if his evidence appears to be essential to the just decision of the case. In the instant case, it has been pleaded in the application that Ravi, Jagar Ram, Manjit Singh had also witnessed the present road side accident which resulted into death of Nitin Khanna. So, certainly their examination is essential to the just decision of the case as they are alleged to have witnessed the occurrence.

11. Mere this fact that these witnesses were not cited by the prosecution is no ground to decline the request of the prosecution because the scope of Section 311 Cr.P.C. is very wide. If the evidence of a witness appears to be essential to the just decision of the case, he can be summoned at any stage of the trial irrespective of the fact that as to whether his name figures or does not figure in the list of the witnesses. Similarly, the non examination of a witness during the investigation is also no bar to exercise the powers under Section 311 Cr.P.C. because when a witness is examined with the permission of the Court under Section 311 Cr.P.C., the accused cannot be said to have been taken by surprise as he knows the identity of the witness and the nature of his evidence. To support this view, reliance can be made to case **Om Parkash Vs. State of Rajasthan 2004(1) R.C.R.(Criminal) 690.**

12. It is a different matter as to how much evidentiary value is to be attached to the testimony of such a witness which is to be appreciated at the appropriate stage by the learned trial Court while

evaluating the evidence.

13. The delay in moving the application is also no ground to decline the request to lead the additional evidence as the additional evidence can be allowed at any stage of the trial. The Hon'ble Supreme Court of India in case **Mohanlal Shamji Soni Vs. Union of India and Anr. 1991(3) R.C.R. (Criminal) 182** has laid down that the summoning of the witness at the close of the arguments is not illegal. In case **Dinesh and others Vs. State of Haryana and Others 2008 (1) R.C.R. (Criminal) 128** this Court has laid down that the Court has power to summon any person as a witness at any stage of the trial even when the evidence was closed and arguments heard but in the instant case when this application was moved, the case was still pending at the stage of prosecution evidence. So, it cannot be stated that the application moved by the prosecution is belated one.

14. Thus, keeping in view my aforesaid discussion as the examination of Ravi, Jagar Ram and Manjit Singh is essential to the just decision of the case, so, I do not find any legal infirmity or illegality in the impugned order.

15. Consequently, the present petition is without any merits and the same is hereby dismissed.

July 29, 2015
ps

(DARSHAN SINGH)
JUDGE