

CRM-M-4568-2014

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In the High Court of Punjab and Haryana at Chandigarh.

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Date of Decision: 28.08.2015

Anil Kumar and antoher

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. N.S. Shekhawat, Advocate,
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

SABINA, J.

Petitioners have filed this petition challenging the order dated 11.12.2013, whereby, application moved by the prosecution under Section 311 of Criminal Procedure Code, 1973 (for short 'Cr.P.C.') was allowed.

Learned counsel for the petitioners has submitted that matter was enquired by the Vigilance Department from 18.01.2006 to 22.02.2008. Thereafter, the matter was further investigated upto 24.02.2011 by the Vigilance Department. After completion of investigation and necessary formalities, challan was presented against the accused. Prosecution evidence was being recorded w.e.f. 20.12.2012. Prosecution

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had availed 11 effective opportunities to lead its evidence and had examined 28 witnesses. Now by moving the present application under Section 311 Cr.P.C., prosecution wants to further examine 16 witnesses. Learned counsel has further submitted that by moving the application under Section 311 Cr.P.C., prosecution wants to fill up the lacuna in its case.

Learned State counsel has opposed the petition.

Petitioners and their co-accused are facing trial in FIR No.10, dated 22.02.2008, under Sections 204, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 and Section 13(1)d) of Prevention of Corruption Act, 1988, registered at Police Station SVB (H), Gurgaon. During the pendency of the trial, prosecution moved an application (Annexure P-2) under Section 311 Cr.P.C. to examine 16 witnesses to prove the record relating to appointment, attendance, payment of salary and transfer orders of the accused.

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

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his evidence appears to it to be essential to the just decision of the case.”

Thus, as per the above provision, trial Court has ample power to summon and examine any person as a witness, if it is essential for the just decision of the case.

In the present case, petitioners are facing trial on the allegations that they had been appointed as Class IV employees by the Education Department, although, there was a ban on direct recruitment. Now, prosecution wants to examine the witnesses to establish the appointment, attendance, payment of salary and transfer orders of the accused. Prosecution merely wants to examine the witnesses to prove the official record. Petitioners will not suffer any prejudice as they will get an opportunity to cross-examine the witnesses, now sought to be examined by the prosecution. Although, the Investigating Agency had not associated the witnesses, now sought to be examined during investigation, but the official record of the petitioners/accused would be necessary for the just decision of the case.

In view of the facts and circumstances of the present case, no ground for interference is made out.

Dismissed.

August 28, 2015
kapil

(SABINA)
JUDGE