

IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

CRM-M-5683-2015

Date of Decision: February 23, 2015

Satwant Kaur @ Satpal and others

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr. R.S. Budhwar, Advocate,
for the petitioners.

NARESH KUMAR SANGHI, J (Oral)

Challenge in this petition, filed under Section 482, Cr.P.C., is to the order dated 7.1.2015 (Annexure P-1), passed by learned Judicial Magistrate Ist Class, Bilaspur, District Yamunanagar, whereby the application filed under Section 311, Cr.P.C., on behalf of the complainant, duly forwarded by the Assistant Public Prosecutor, was allowed and it was directed that the evidence/deposition of Dr. Anil Aggarwal, who had medico-legally examined, Baljinder Kaur, was essential for the just

decision of the case.

Learned counsel contends that after affording as many as nine last opportunities, the evidence of the prosecution was closed by Court order on 18.10.2014 and thereafter statements of the petitioners in terms of Section 313, Cr.P.C., were recorded on 11.11.2014. The case before learned Trial Court had reached at the stage of defence evidence and at that time an application under Section 311, Cr.P.C., was presented for leading additional evidence. He further contends that the said application was presented only to prejudice the rights of the petitioners and for further delay of the trial.

I have heard learned counsel for the petitioners and with his able assistance gone through the material available on record.

While deciding the aforementioned application, in para Nos. 5 and 6 of the impugned order dated 7.1.2015 (Annexure P-1), learned Judicial Magistrate Ist Class, Bilaspur, has held as under:-

“5. After having heard learned counsel for both the parties and perusing the case file minutely and carefully, this court is of considered view that the

application in hand deserves to be allowed as the medico legal certificate has been issued by Dr. Anil Aggarwal and in absence of the evidence of above said doctor, the medico legal certificate issued by the above said doctor will remain unproved and it will defeat the whole case of the prosecution. The application has been forwarded by learned APP for State. The deposition of above said doctor is very much necessary for just and proper decision of the case. The accused has opportunity to cross examine the above said witness. Non-appearance of the witness for want of service of summons or non-appearance of the witness despite of the service of the summons shall not give any jurisdiction to the court to close the evidence of the prosecution, rather court must take coercive actions against those witnesses, who failed to appear despite of the service of the summons compelling them to appear before the court for the recording their statements. Section 311 Cr.P.C. is in two parts. First part of section 311 Cr.P.C. gives discretionary powers to the trial court while second part of the section cast obligation on the trial court to recall any witness for the examination/cross-examination, if court finds that statements of those witness shall be important in support or against prosecution story. In case titled Harchand Singh versus State of Punjab and others (Supra)[2011 (2) RCR (Criminal) 693] it is held that non-appearance of witness despite service of summons

shall not give jurisdiction to the court to close the evidence of prosecution. In another case titled as Mary Pappa Jebamani Versus Ganesan and others (Supra) [2014 (1) RCR (Criminal) 367] it is held that Section 311 Cr.P.C. Retrial- Where prosecution lacs in bringing necessary evidence, the trial court ought to invoke its powers under section 311 of the Criminal Procedure Code and can direct for retrial.

6. *Since, the evidence of doctor is material for just and proper decision of the case, hence, in the interest of justice, the application in hand stands allowed. Resultantly, the above said Dr. Anil Kumar Aggarwal, Hospital, Jagadhri, be summoned with direction to come present alongwith the record of CR No. AKA/1-2009 dated 23.07.2009 of Baljinder Kaur for 06.02.2015.”*

Perusal of the above two paras from the impugned order would clearly spell out that a categoric finding has been returned by learned Trial Court that the deposition of Dr. Anil Kumar Aggarwal, who medico-legally examined Baljinder Kaur, was essential for the just decision of the case.

Hon'ble the Supreme Court in the matter of **Mannan SK and others v. State of West Bengal and another**, 2014 (4) **R.C.R. (Criminal) 617**, has held that recalling of a witness after

22 years of the incident was not illegal provided the evidence was required for just decision of the case. Justice must not be allowed to suffer because of oversight of the prosecution.

In view of the findings recorded by learned Trial Court as well as the ratio of the judgment of Hon'ble the Supreme Court in the matter of **Mannan SK (supra)**, there is no substance in the present petition and the same is hereby dismissed.

(NARESH KUMAR SANGHI)
JUDGE

February 23, 2015
Pkapoor