

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8821-2015

Date of decision: 20.03.2015

Jasbir Kaur and ors.

... Petitioners

Vs.

Mukhtiar Kaur and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Anil Chaudhary, Advocate
for the petitioners.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK J.(ORAL):

Feeling aggrieved against the order dated 03.03.2015 passed by the learned Special Judge, Sangrur, allowing an application under Section 311 of the Code of Criminal Procedure ('Cr.P.C.' for short), summoning two witnesses for examination, petitioners have approached this Court by way of instant petition under Section 482 Cr.P.C.

Learned counsel for the petitioners submits that learned Special Judge, Sangrur has misdirected himself while passing the impugned order. He further submits that Sukhpal Singh son of Atma Singh and Mithu Singh son of Lal Singh were not required to be summoned and examined. Application under Section 311 Cr.P.C., moved by the learned Addl. P.P. for the State, was liable to be dismissed. He next contended that a serious prejudice has been caused to the petitioners by allowing the application under Section 311

Cr.P.C. by passing the impugned order. In support of his contentions, learned counsel for the petitioners places reliance on a judgment of this Court in **Harnam Singh Vs. M/s Bhushan Metalics Ltd. 2007 (1) RCR (Crl.) 992**. He prays for setting aside the impugned order passed by Special Judge, Sangrur, by allowing the present petition.

Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the facts and circumstances of the present case, instant one is not a fit case warranting interference at the hands of this Court, while exercising its inherent powers under Section 482 Cr.P.C. To say so, reasons are more than one, which are being recorded hereinafter.

The two witnesses namely Sukhpal Singh son of Atma Singh and Mithu Singh son of Lal Singh who have been summoned for examination as witnesses, by allowing the application under Section 311 Cr.P.C., are said to be eye-witnesses. Further, the learned Special Judge has recorded his satisfaction that examination of these two witnesses was necessary for just decision of the case. This was the only requirement under Section 311 Cr.P.C. so as to enable the learned Special Judge to exercise his discretionary power, for advancing the cause of justice. Having said that, this Court feels no hesitation to conclude that the learned Special Judge, Sangrur committed no error of law, while passing the impugned order and the same deserves to be upheld.

Before arriving at a judicious conclusion, the learned Special Judge has discussed each and every material aspect of the matter by recording

cogent reasons. The relevant observations made by the learned Special Judge in Para 3 of the impugned order read as under: -

“From the perusal of judicial file, this Court finds that as per the case of the prosecution on 29.11.2005, Jasvir Kaur alongwith her son Mithu Singh and relatives Bhura Singh and Tony Singh kidnapped Jang Singh in a Mahindra Jeep without number plate at about 2.00 P.M. and thereafter, the whereabouts of Jang Singh are not known to any person. Earlier an FIR was registered against the accused as per directions of the Hon'ble High Court, but later on, cancellation report was submitted by the police in the said case. Thereafter, complainant Mukhtiar Kaur filed a criminal complaint and accused were summoned to face trial U/s 364/34 IPC by the learned trial Court vide order dated 06.06.2014. This case was received by entrustment by this Court on 03.09.2014. After framing of charge, one witness Jagtar Singh was examined by the prosecutio, but he has not supported the case of the prosecution and he was declared hostile. Thereafter, prosecution filed an application U/s 311 Cr.P.C. for summoning Sukhpal Singh son of Atma Singh and Mithu Singh son of Labh Singh, the alleged eyewitnesses to depose in Court regarding the occurrence dated 29.11.2005. According to Section 311 Cr.P.C., “any Court may at any stage of any inquiry, trial or other proceeding under this Court, 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". In the present case, as per the case of the prosecution, Sukhpal Singh and Mithu Singh had witnessed the entire occurrence dated 29.11.2005, whereby accused had kidnapped Jang Singh in a Mahindra Jeep and since then his whereabouts were not known. These witnesses are very essential for the just decision of the case. In **Mannan Sk. and others Versus State of West Bengal and another, reported in 2014 (4) RCR (Criminal) 617 (SC)**, it has been held by the Hon'ble Apex Court that, "Section 311 of Cr.P.C. says that the Court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. It is further held by the Hon'ble Apex Court that whether recall of a witness is for filling up a lacuna or it is for the just decision of the case, depends upon facts and circumstances of each case". The law laid down in these citations is fully applicable to the facts of the case in hand. No prejudice will be caused to the accused if these witnesses are examined by the prosecution because their veracity will be checked at the threshold of cross-examination. The citation relied upon by the learned defence counsel **Budh Ram Versus State of Punjab, reported in 1996 (2) RCR 270** is not applicable to the facts of the case in hand. In that case, application U/s 311 Cr.P.C. was dismissed by the Hon'ble*

High Court on the plea that when accused makes a statement U/s 313 Cr.P.C., he practically discloses his defence In that case, evidence of the prosecution was already closed and even statements of accused were recorded U/s 313 Cr.P.C. Whereas it is not so in the present case. Similarly citation relied upon by the learned defence counsel Rughveer Prashad Sharma Versus State of M.P. reported in 2010 (3) Criminal Court Cases 773 is not applicable to the facts of the case in hand. In that case, application was dismissed as the name of the person was not mentioned in the list of witnesses in the challan submitted by the prosecution and even his statement was not recorded U/s 161 Cr.P.C. Whereas in the present case prosecution has been launched on the basis of private complaint filed by complainant Mukhtiar Kaur. As it is in the intrerest of justice and to adjudicate the controversy properly, application U/s 311 Cr.P.C. is hereby allowed. Anything observed while passing this order will have no effect on the merits of the case in hand”.

During the course of hearing, when a pointed question was put to learned counsel for the petitioners as to what was the patent illegality in the impugned order, he had no answer and rightly so because it was a matter of record. So far as the judgment relied upon by learned counsel for the petitioners is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioners, being distinguishable on facts. In the cited judgment, it was the third application in a row moved by the prosecution with

a view to fill up lacuna of its case. The prosecution moved the application after a gap of long 11 years whereas in the present case, the fact situation is entirely different.

Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It is the settled proposition of law that the Court has ample powers under Section 311 Cr.P.C. to summon and examine any person at any stage of the trial. In this regard, the view taken by this Court also finds support from the judgment of Hon'ble Supreme Court in **Mohanlal Shamji Soni Vs. Union of India and another 1991 (Suppl.-1) SCC 271.** The relevant observations made by Hon'ble Supreme Court in Paras 6 to 9 of the judgment in Mohanlal Shamji's case (supra), which can be gainfully followed in the present case, read as under: -

Before advertng to the arguments advanced on behalf of the appellant, we would examine in general the scope and intent of Section 540 of the old Code (corresponding to Section 311 of the new Code).

Section 540 was found in Chapter XLVI of the old Code of 1898 under the heading 'Miscellaneous'. But the present corresponding Section 311 of the new Code is found among other Sections in Chapter XXIV under the heading 'General

Provisions as to Enquiries and Trials'. Section 311 is an almost verbatim reproduction of Section 540 of the old Code except for the insertion of the words 'to be' before the word 'essential' occurring in the old Section. This section is manifestly in two parts. Whereas the word used in the first part is 'may' the word used in the second part is 'shall'. In consequence, the first part which is permissive gives purely discretionary authority to the Criminal Code and enables it at any stage of enquiry, trial or other proceedings' under the Code to act in one of the three ways, namely,

(1) to summon any person as a witness, or

(2) to examine ' any person in attendance, though not summoned as a witness, or

(3) to recall and re-examine any person. already examined.

The second part which is mandatory imposes an obligation on the Court-

(1) to summon and examine, or

(2) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

The very usage of the words such as, any Court', 'at any stage', or 'of any enquiry, trial or other proceedings', 'any person' and any such person' clearly spells out that this section is

expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case.

Reverting back to the facts of the present case, since the learned Special Judge has come to a definite conclusion that examination of abovesaid two witnesses was essential for just decision of the case, the learned Court was fully justified in passing the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition is dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

20.03.2015
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