

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

**CRR No.1387 of 2015
Date of Decision: April 29, 2015**

Lakhbir Singh Lakhi

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Ms. Jigyasa Tanwar, Advocate
for the petitioner.

Mr. J.S. Brar, AAG, Punjab.

Mr. Sunil Chadha, Senior Advocate
with Ms. Pallavi, Advocate for complainant.

FATEH DEEP SINGH, J.

It was on the mutual urgency shown by the two sides and the fact that the trial before the learned lower Court was a time bound case as per the earlier directions of this Court and, thus, the matter is being taken up for expeditious disposal.

In this revision, the petitioner who happens to be the accused in custody in this case has sought to impugn order dated 9.4.2015 Annexure P/1, whereby, an application under Section 311 Cr.P.C. preferred by the respondent-State stood allowed leading to summoning of additional evidence by way of witnesses, who were already there on the list of witnesses.

Heard, learned counsel for the parties. Before adverting onto the legal merits, it is essential to recapitulate the

factual background of this petition. As has been canvassed, during the trial of this case, one petitioner Harbhajan Singh invoked the jurisdiction of this Court under Section 482 Cr.P.C. seeking issuance of direction to the trial Court to expedite and dispose off the trial and it is consequent upon thereto, orders dated 25.7.2014 Annexure P/4 were passed by this Court which are as follows:-

“It would be in the interest of justice to direct the trial Court to make all efforts to conclude the trial preferably on 30.7.2014 i.e. the date fixed before the trial Court. However, in case, under any circumstances, the trial Court is not in a position to conclude the trial with the stipulated time, then the same be concluded in one more date, preferably within a period of one month thereafter.”

It is thereafter, orders dated 20.2.2015 Annexure P/5 were passed by this Court directing the learned trial Court to conclude the trial within three months from the passing of this order. In this background, the learned trial Court passed order dated 26.3.2015 that as per the stand of the State and, thus, PWs at serial No.3,9, and 16 remains to be examined and taking into consideration being a time bound case has passed a detailed order which does not necessitates its reproduction, whereby, the learned trial Court has shown its desperation and anguish how the process of the Court was sought to be subverted and the Court was forced to intimate the fact through a letter to the learned District and Sessions Judge seeking his intervention. It needs to be reiterated here that it was during the trial the statement of ASI Jaswant Singh, the Investigating Officer a material witness was partly recorded and, thereafter, he failed to put in appearance which has led to this innocuous situation. As even the report of ASI,

Inderjeet Singh placed on record shows that this police official who has since retired had gone to England and it is thus elicited subsequently in the order dated 1.4.2015 of the trial Court that one of the witness Bhupinder Pal, Patwari had died and that this material witness Investigating Officer on his return from abroad had undergone eye operation and who was ordered to be summoned by way of issuance of bailable warrants. Prior thereto during the trial, an application dated 12.12.2014 was earlier moved by way of Annexure P/6 wherein, it was asserted by the State that since the Investigating Officer has left abroad and therefore, Patwari along with the relevant records and HC Baljinder Singh and ASI Balwinder Singh be summoned and it was before the decision on this application, another application Annexure P/7 was moved on 21.2.2015, wherein, it was mentioned regarding arrival in India of Investigating Officer ASI, Jaswant Singh.

Undisputedly it was on the application under Section 311 Cr.P.C. moved by the prosecution for summoning of Patwari of village Daad along with HC Baljinder Singh and ASI Balwinder Singh on the grounds that since the Patwari, Bhupinder Pal Singh had died and it was essential for the prosecution to prove the revenue records regarding the ownership of the land in question and, therefore, the record be called for through the present Patwari of this village Daad and that earlier HC Baljinder Singh and ASI Balwinder Singh were given up as necessary by the State as it was not aware of such a situation which has crept in subsequently and, that is how, prayer for leading additional evidence come into being.

The accused-respondents in their response to this application had besides taking up usual objections have raked up the issues that these witnesses were given up voluntarily earlier and, therefore, could not be recalled. It was through the impugned order dated 9.4.2015 learned trial Court partly allowed the application and request of the prosecution for summoning Patwari, Halqa Daad was declined as such revenue record was never relied upon in the report under Section 173 Cr.P.C. and finding that ASI Balwinder Singh was a formal witness to prove the ruqa and FIR which were already proved on the record and, thus, allowed the prayer for summoning HC, Baljinder Singh and that is how the petitioner has come up in this petition impugning this order.

Appreciating the arguments of the two sides provisions of Section 311 Cr.P.C. have been carved out enabling any Court at any stage of trial to recall and re-examine any person already examined and after summoning them may 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. Thus, as has been contended on behalf of the respondent by learned Senior counsel Mr. Sunil Chadha gives enormous powers to the Court to call for any such witness whose statement/evidence appears to be essential for the just decision of the case. To the very query of the Court, learned counsel for the petitioner could not show cause as to how there has been transgression of these powers by the learned Court below and how the Court was not obliged to exercise its jurisdiction under these provisions and that is how the learned counsel for the respondent has sought to place reliance on

Mannan SK and others vs. State of West Bengal and another 2014(4) R.C.R. (Criminal) 617; Iddar and others vs. Aabida 2007(3) R.C.R. (Criminal) 909 and Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others 2002(2) R.C.R. (Criminal) 836 and, which ratios enunciates the position of law which is well entrenched that it is the sole judicial discretion which holds to sway and cannot be circumvented, even if, no such prayer has been sought by the State and the Court on its own *suo-motu* can do so in exercise of these powers and nothing can be found fault with in such a situation. More than that, by exercise of such a discretion arms the Court with the powers to summon even those witnesses which have earlier been given up or were examined and the contention of the counsel for the petitioner that after part examination of Investigating Officer, ASI, Jaswant Singh was recorded he could not be again summoned after having been given up thereafter and which arguments in the light of these provisions appears to be highly fallacious to this Court.

From this all, it can be reasonably and judiciously concluded that there has not only been judicious but as well as liberal use of powers by the Court below and it is in the furtherance of ends of justice the same has been made and there is no element of illegality or impropriety in these orders which could necessitate intervention of this Court. Finding the instant petition to be wholly devoid of any merit stands dismissed.

**(FATEH DEEP SINGH)
JUDGE**

April 29, 2015
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