

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No.2152 of 2015

Date of Decision: July 01, 2015

Kuldeep Singh son of Niranjana SinghPetitioner

Versus

State of PunjabRespondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.BS Saini, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The present revision petition is directed against the order dated 13.5.2015 passed by the learned Judicial Magistrate 1st Class, Kharar in terms of which an application filed under Section 311 of the Code of Criminal Procedure (for short 'the Code') has been allowed and permission has been granted to examine SP Sarabjit Singh and Raj Balwinder Singh Marar as prosecution witnesses.

2. Shorn of all unnecessary details, FIR No.229 dated 9.9.2010, under Sections 323, 452, 34 of the Indian Penal Code was got registered against the present petitioner and Varinder Singh @ Bittu by Shamsheer Singh son of Parkash Singh at Police Station Kharar, District SAS Nagar. After completion of investigation, challan was presented. Prosecution filed an application under Section 311 of the Code seeking permission to

examine SP Sarabjit Singh and Raj Balwinder Singh Marar by contending that their presence is necessary for the just decision of the case. Such application stands allowed vide impugned order dated 13.5.2015.

3. Learned counsel appearing for the petitioner has argued that SP Sarabjit Singh and Raj Balwinder Singh Marar were not even cited as witnesses and yet the application under Section 311 of the Code has been allowed by the trial Court. As per learned counsel, the impugned order cannot sustain on such short ground alone. That part, learned counsel has submitted that the application for examination of the two afore-noticed witnesses has been allowed at a belated stage and the same amounts to permitting the prosecution to fill up lacuna.

4. Having heard learned counsel for the petitioner at length and having perused the case paper book, this Court is of the considered view that no case for interference is made out.

Section 311 of the Code reads as follows:

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

5. A perusal of Section 311 of the Code, referred to above, would show that vast powers are vested with the Court to summon “any person” as a witness or recall or examine any witness if already examined “at any stage” of inquiry, trial or other proceedings.

6. The scope of exercise of power under Section 311 of the Code was considered by the Hon'ble Supreme Court in **U.T. of Dadra and Haveli and another v. Fatehsinh Mohansinh, 2006 (4) RCR (Criminal) 113** and it was observed as under:

“A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be dubbed as “filling in a lacuna in prosecution case” unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice.”

7. In the present case, the matter is at the stage of prosecution evidence. The petitioner will have an opportunity to cross-examine the afore-noticed witness on all aspects of the

matter. Learned counsel has not been able to demonstrate as to in what manner prejudice would be caused to the accused/present petitioner on account of the application under Section 311 of the Code having been allowed. Power vested in the trial Court under Section 311 of the Code would include even grant of permission to the prosecution to examine any witness though not named in the list of witnesses. The trial Court having exercised its discretion in terms of passing the impugned order, there would be no basis for interference in the same by this Court in exercise of its revisional jurisdiction.

8. For the reasons recorded above, revision petition is dismissed.

July 01, 2015
SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)