

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2490 of 2015 (O&M).
Decided on:-August 18, 2015.

Rajinder Singh Chadha.

.....Petitioner.

Versus

Union Territory, Chandigarh.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. A.P.S. Rana, Advocate
for the petitioner.

Mr. Gautam Kaile, Advocate for
Mr. Rajiv Sharma, Advocate
for UT-Chandigarh.

HARI PAL VERMA, J.

Petitioner-accused Rajinder Singh Chadha has filed the present revision petition against order dated 4.4.2015 passed by learned Judicial Magistrate 1st Class, Chandigarh whereby the application filed by the petitioner under Section 311 Cr.PC for recalling the witness i.e. SI Naveen Sharma (PW3), who was the investigating officer in the case for cross-examination, was dismissed.

Briefly stated, an FIR No.365 dated 13.11.2009 under Sections

420, 120-B IPC was registered at Police Station, Sector 17, Chandigarh against the petitioner and Agwinder Singh. On the basis of investigation, challan as provided under Section 173 Cr.PC was presented in the court. The petitioner as well as the other accused were charge-sheeted on 15.10.2013 and charge under Sections 420/120-B IPC was framed against them. The case thereafter was adjourned for prosecution evidence on various dates. On 15.1.2015, the trial Court had passed the following order:

“Present:- Sh. Sohan Singh, APP for the State.

*Accused Rajinder on bail along with counsel
Sh. APS Rana, Advocate.*

Mr. Atul Kaushik, counsel for complainant.

Counsel for accused Angwinder Singh.

Sh. A.P.S. Rana Advocate has filed POA on behalf of accused Rajinder Singh Chadha. PW 3 present and examined. PW1 Sh. Babu Ram Garg and PW2 Sh. Krishan Kumar Garg were bound down on the last date but they have not turned up. In order to procure their presence, they are ordered to be summoned throughailable warrants for the sum of Rs.5000/- with one surety in the like amount for the next date 23.02.2015.

Sd/-

Pradeep Synghal, JMIC/15.01.2015”

Learned counsel for the petitioner contends that the trial Court has not considered the written request for adjournment of the petitioner and no such order for rejection or acceptance was shown in the jimni order dated

15.1.2015. The cross-examination of SI Naveen Sharma (PW3) was marked as Nil and the case was fixed for 23.2.2015. However, on 23.2.2015, the petitioner had filed an application under Section 311 Cr.PC for recalling the witness i.e. SI Naveen Sharma (PW3) to cross-examine the said witness. In the application, it was asserted that the case was fixed for prosecution evidence on 15.1.2015 and examination-in-chief of SI Naveen Sharma (PW3) was recorded. The petitioner had moved an application before the trial Court for an adjournment on the ground that the counsel engaged by him to defend his case was not properly attending the case and he had lost confidence in him. Therefore, he wanted to engage some other lawyer in place of that lawyer. After the filing of the application, the petitioner-accused engaged Mr. A.P.S. Rana, Advocate as his counsel. He had appeared before the trial Court. It has also been asserted that PW3 is the investigating officer of the case and he being a material witness is required to be cross-examined to determine the truth which is essential for just decision of the case. Recalling of said witness for cross-examination will not cause any irreparable loss to any of the parties whereas in case the cross-examination of said witness is not recorded, then serious prejudice would be caused to the petitioner-accused and he would suffer an irreparable loss and injury.

The application dated 23.2.2015 filed under Section 311 Cr.PC came up for consideration and was dismissed vide impugned order dated 4.4.2015 by the trial Court. It is the aforesaid order which is subject matter of challenge before this Court.

Learned counsel for the petitioner contends that the application under Section 311 Cr.PC has been dismissed in a mechanical manner without appreciating the real facts as narrated in the application. He further submits that order dated 15.1.2015 whereby the cross-examination of PW3 was marked as Nil is not sustainable in the eyes of law. In the case in hand, charge was framed on 15.10.2013 and the various jimni orders which are part of the record, nowhere suggest that the petitioner has caused any delay in the present case. The application dated 23.2.2015 for recalling the said witness i.e. PW3 contains complete details and the cross-examination of PW3 is necessary to go into the root of the truth and for the just decision of the case.

Provisions of Section 311 Cr.PC read 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 his evidence appears to it to be essential to the just decision of the case.”

Learned counsel for the petitioner has submitted that a bare perusal of the aforesaid provisions makes it abundantly clear that the Court, may at any stage of enquiry, trial or other proceeding, summon any witness if such evidence appears to be essential for the just decision of the case. He

has further contended that the filing of application under Section 311 Cr.PC is not delayed in any manner. The examination-in-chief of PW3 was recorded on 15.1.2015 whereas the application for recalling of said witness for recording his cross-examination was filed immediately on the next date of hearing i.e. 23.2.2015.

On the other hand, learned counsel for the respondent has contended that there is no illegality in the impugned order dated 4.4.2015 passed by the trial Court. The application was filed by the petitioner just to fill up the lacuna and was aimed to delay the proceedings. Learned counsel has tried to justify the impugned order on the plea that the petitioner is in habit of changing counsel one after the other so as to prolong the trial. He further contends that in case the petitioner had lost faith in his counsel, it was incumbent upon him to engage another lawyer well before the date fixed, but by not doing so, he is causing delay of the proceedings. The trial Court on 21.11.2014 had bound down the witnesses, but on the plea of the petitioner that the lawyer of the petitioner was changed, the case was adjourned to 15.1.2015. Even on that date i.e. 15.1.2015, similar strategy was adopted by the petitioner by engaging another lawyer. So, he submits that no doubt, the courts are well within their jurisdiction to call any witness at any stage of enquiry or trial but the court cannot ignore the prejudice being caused to the other side without there being any fault on their part. He has further contended that filing of the application by the petitioner was nothing but delay tactics.

I have heard learned counsel for the parties.

No doubt, the petitioner has changed his counsel one after the other but this Court cannot ignore the fact that on 15.1.2015, the petitioner had submitted an application before the trial Court for adjournment of the case as the petitioner wanted to change his counsel. The order dated 15.1.2015 passed by the trial Court nowhere suggests as to whether the request of the petitioner for adjournment of the case was considered as rejected or accepted. The said jimni order only refers to the next date of hearing i.e. 23.2.2015 and on that date, the petitioner had moved an application under Section 311 Cr.PC. Therefore, it cannot be said that filing of said application for summoning of the witness under Section 311 Cr.PC was aimed to delay the proceedings before the trial Court. As such, this Court finds that no prejudice is going to be caused to the respondent in case SI Naveen Sharma (PW3), who is investigating officer of the case, is recalled for recording his cross-examination. The provisions of Section 311 Cr.PC are very liberal in nature, but at the same time, the same cannot be used to fill up the lacuna more particularly when the Court has examined all the witnesses. In ***Davendra Singh @ Pintoo Baba Versus State of Uttarakhand 2013(1) U.D. 414***, the Hon'ble Uttarakhand High Court had examined the scope of Section 311 Cr.PC and observed that the court can summon any person as a witness at any stage of trial. It was further observed that the Court can call a witness not only on the motion of either of the parties, but can also do so on its own motion. Similar view has been

expressed by Hon'ble Supreme Court in ***Rajaram Prasad Yadav Versus State of Bihar and another 2013(3) RCR (Criminal) 726*** wherein it was observed that the exercise of the said power cannot be dubbed as filling in a lacuna in a 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. The Apex Court had further observed that the Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible and in that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Apex Court had further held that the Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

Considering the fact that SI Naveen Sharma (PW3) being investigating officer of the case, was one of the important witnesses, who could not be examined on 15.1.2015, the impugned order dated 4.4.2015 dismissing the application under Section 311 Cr.PC cannot be termed to be justified. There is no doubt that the case is pending since long, but the said witness could not be cross-examined on that day because of change of lawyer. Therefore, there was no intentional act on the part of the petitioner to cross-examine said witness.

Accordingly, I find substance in the present petition and set

aside the impugned order dated 4.4.2015 passed by the trial Court. As such, while accepting the present petition, the application under Section 311 Cr.PC filed by the petitioner before the trial Court is allowed and the trial Court is directed to afford one more opportunity to the petitioner by recalling SI Naveen Sharma (PW3) for recording his cross-examination.

It is made clear that this petition has been decided on the limited question of Section 311 Cr.PC and any observations made hereinabove shall not be construed as a reflection of any opinion on the merits of the main case and the trial Court shall decide the case on the basis of available evidence.

August 18, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE