

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

**Crl. Revision No. 2542 of 2014 (O&M)
Date of Decision: 13.07.2015**

Harish Kumar

.. Petitioner

Vs.

State of Haryana & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

**Argued by:- Mr. Kartar Singh Malik-I, Advocate
for the petitioner.**

Mr. G.S. Salwara, DAG Haryana.

**Mr. Bhanu Pratap Singh, Advocate
for respondent No.2.**

**Mr. Deepak Girotra, Advocate
for respondent No.3.**

ANITA CHAUDHRY, J.

The petitioner-complainant is aggrieved of the order dated 09.07.2014 passed by Additional Chief Judicial Magistrate, Rohtak vide which the application filed by the prosecution under Section 311 Cr.P.C. for recalling Pws Inspector Vikas and Sub Inspector Shri Krishan, for cross-examination, has been dismissed.

In the instant case, prosecution was launched at the instance of O.P. Gupta, Director, Green Valley Plywood, against respondent Sanjay by way of FIR No.561 dated

14.09.2006, under Sections 63 of Copy Right Act and 420 IPC, Police Station Civil Lines, Rohtak for selling spurious and duplicate products. After the death of O.P. Gupta, the petitioner was permitted to pursue the complaint.

On 13.02.2014 examination-in-chief of witnesses, namely, Inspector Vikas and Shri Krishan was recorded, but their cross-examination was deferred on the request of defence counsel. After that they were not brought before the Court for cross-examination. On 11.06.2014 the Court closed the prosecution evidence by order. The prosecution then filed an application under Section 311 Cr.P.C. seeking summoning of both the investigating officers i.e. Inspector Vikas and Sub Inspector Shri Krishan, for their cross-examination. The trial Court vide impugned order dated 09.07.2014 dismissed the application. Dis-satisfied with the same, instant revision petition has been filed.

Learned counsel for the petitioner has urged that the cross-examination of both the witnesses was necessary for just decision of the case and these witnesses were neither summoned nor bound down and it was the duty of the Court to summon the witnesses as cross-examination was deferred at the instance of the defence. He has placed reliance on **P. Sanjeeva Rao Vs. State of A.P. 2012(3)**

Recent Apex Judgments 426.

The petition has been opposed by the private respondents on the ground that opportunities had been availed and the prosecution failed to conclude its evidence. Constrained with the circumstances, the trial Court had rightly closed the evidence of the prosecution. It was urged that the petitioner has not challenged the order closing the evidence.

To enable the Court to find out the truth and render a just decision, the salutary provisions under Section 311 of the Code are enacted whereunder any Court exercising its discretionary authority, at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute.

In the instant case, both the witnesses sought to be recalled for cross-examination are the investigating officers of the case. Examination-in-chief of both of them was recorded on 13.02.2014, but their cross-examination was deferred on the request of learned defence counsel. On that very day, an application under Section 319 Cr.P.C. was

filed for summoning Deepak-respondent No.3 as an additional accused. The application was allowed on 12.03.2014, but his presence could not be produced. Vide order dated 26.05.2014 Deepak was declared a proclaimed offender and the case was adjourned to 11.06.2014 for evidence of prosecution. Witnesses were ordered to be summoned through bailable warrants. On 11.06.2014 without considering the fact that the bailable warrants of witnesses had been received back unexecuted, the trial Court, in a haste, closed the prosecution evidence. It has not been shown that bailable warrants of the two witnesses were issued. Even otherwise there was no occasion to issue warrants against them as they had been discharged on 13..02.2014. The Court overlooked the fact that witnesses Inspector Vikas and Sub Inspector Shri Krishan were yet to be cross-examined. They being the investigating officers are very important witnesses and in absence of the cross-examination, their examination-in-chief would not be read.

No doubt charge in this case was framed on 27.08.2011 and number of opportunities were granted to the prosecution to lead its evidence but the Court below was required to allow the prosecution to recall the aforesaid witnesses as the prosecution was not at fault. This apparently is an error and not an exercise to fill up the

lacuna.

In view of this, the impugned order is set aside. It is directed that the parties would appear in the Court on 24.07.2015. The trial Court shall fix a date for the cross-examination of the witnesses. It is also made clear that there will be no bar for the trial court to adopt any coercive method, if required to procure the presence of these witnesses. The trial Court shall ensure that no unnecessary adjournment will be granted in the case and if possible, their cross-examination be concluded on the same date. Thereafter, the trial Court shall proceed with the trial in accordance with law.

With the aforesaid observations and directions, the instant petition stands allowed.

July 13, 2015
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(ANITA CHAUDHRY)
JUDGE