

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-2903-2014
Date of decision:20.10.2015

Jaspal Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Mohd. Yousaf, Advocate for the petitioner.
Mr.P.S.Bajwa, Addl.A.G., Punjab.
Mr.G.B.S.Dhillon, Advocate for respondents
No.4 to 8.

RAMESHWAR SINGH MALIK, J. (Oral)

Present criminal revision petition is directed against the order dated 27.8.2014 passed by the learned Additional Sessions Judge, Ludhiana, whereby application under Section 311 of the Code of Criminal Procedure ('Cr.P.C.' for short) was allowed, directing the prosecutrix to give her thumb impression, in order to compare the same with the alleged disputed signatures and thumb impressions, on the affidavit.

Notice of motion was issued.

Learned counsel for the petitioner submits that the learned trial Court has exceeded its jurisdiction, while passing the impugned order. There was no occasion for the trial Court to pass the impugned order. He further submits that the application under Section 311 Cr.P.C. was moved only with a view to harass and humiliate the prosecutrix. She had already stated that her signatures were obtained on blank paper forcibly and she

cannot be forced to give the evidence against herself. Once the similar application was earlier moved, this prayer could have also been made at that very point of time. However, since the learned trial Court has proceeded on a misconceived approach, while passing the impugned order, the same is liable to be set aside. He prays for setting aside the impugned order, by allowing the instant petition.

On the other hand, learned counsel for the State as well as learned counsel for the private respondents submit that the learned trial Court was well within its jurisdiction, to pass the impugned order. They further submit that the impugned order has been rightly passed, so as to enable the learned trial Court to arrive at a judicious conclusion. Neither any harassment nor any humiliation was sought to be caused to the prosecutrix. The learned trial Court was trying to know the truth with a view to do complete and substantial justice between the parties. It is the duty of every party before the Court to assist the learned courts to know the truth to enable it for doing substantial justice. No prejudice has been caused to the petitioner. They pray for dismissal of the present petition.

Having heard the learned counsel for the parties 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 no interference is warranted, at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

So far as scope, ambit and object of Section 311 Cr.P.C. is concerned, the same is wide enough. The powers under Section 311 Cr.P.C. can be exercised by the learned trial Court at any point of time, during the

course of trial. The only self imposed restrictions on the powers under Section 311 Cr.P.C. are that nature of case cannot be permitted to be changed and a serious lacuna cannot be permitted to be filled, at the instance of a party to the litigation, by moving an application under Section 311 Cr.P.C.

So far as the present case is concerned, a bare reading of the impugned order would show that the learned trial Court has not exceeded its jurisdiction, while passing the impugned order. A bare perusal of the impugned order would show that each and every relevant aspect of the matter has been examined, considered and rightly appreciated before passing the impugned order, which deserves to be upheld.

The relevant observations made by the learned trial Court, in para 3 of its order, which deserve to be noticed here, read as under:-

“....In this regard it is also necessary to mention that specific question has been put to the prosecutrix during her cross examination qua put her alleged thumb impression on documents i.e. affidavit mark DZ/1 at points, A,B,C, D and E and thumb impression on the marriage certificate mark DY at point A, B, C, D, E and F. Moreover, the report of the handwriting and fingerprint expert is also not conclusive until and unless the disputed thumb impression on those documents compared with the specimen thumb impression of the prosecutrix.

Further in this regard it is necessary to mention that the court can invoke the provision U/s 311 Cr.P.C. at any time and can recall witness in the court at any stage as the purpose of the court by recalling the witness is to extract the truth and to brought the same on record.

Thus, in view of the above in all common sense and logic it seems that due to oversight or inadvertence, no finding with regard to obtaining the thumb impression of the prosecutrix

has been given while allowing the application of the accused-applicants for obtaining specimen signatures of the prosecutrix and thumb impression of the prosecutrix in order to compare the same with the alleged dispute signatures and thumb impression on the affidavit and the marriage certificate mark DZ/1 and mark DY and the said error is hereby rectified by the court. Thus, in view of same, the present application is allowed and notice be issued to the prosecutrix for 29.08.2014 for obtaining of her specimen thumb impression for comparing the same with the disputed thumb impression on the documents mark DZ/1 and mark DY.”

The above-said cogent reasons, assigned by the learned trial Court, would show that the learned trial Court felt it necessary to allow the application under Section 311 Cr.P.C., with a view to unearth the truth, so as to enable itself for arriving at a just conclusion. It has also come on record that while passing the earlier order, this aspect of the matter could not be appreciated and the said *bona fide* mistake was rightly rectified by passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned trial Court has committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as of this Court:-

1. **Rajaram Prasad Yadav v. State of Bihar and another,**
2013 (14) SCC 461;
2. **Jamatraj Kewalji Govani v. State of Maharashtra,**
AIR 1968 SC 178;
3. **Mohanlal Shamji Soni v. Union of India and anr.,**

1991 SCC (Crl) 595;

4. U.T. Of Dadra and Nagar Haveli and anr. v. Fatehsinh Mohansinh Chauhan, 2006 (7) SCC 529;
5. Iddar and others v. Aabida and another, 2008(1) SCC (Crl.) 22;
6. P.Sanjeeva Rao v. State of Maharashtra, 2012 (7) SCC 56.
7. Sheikh Jumman v. State of Maharashtra, 2012 (12) SCC 486;
8. Natasha Singh v. CBI (State), 2013 (5) SCC 741;
9. CRM-M-2860-2015 (Ranjit Singh v. Boota Singh), decided by this Court on 4.8.2015.

The relevant principles of law laid down by the Hon'ble Supreme Court in para 13, 14 & 23 of its judgment in **Rajaram Prasad Yadav's** case (supra), which can be gainfully followed in the present case, read as under: -

“Having heard the learned counsel for the respective parties and having bestowed our serious consideration to the issue involved, we find force in the submission of the counsel for the appellant, as the same merits acceptance. In order to appreciate the stand of the appellant it will be worthwhile to refer to Section 311 Criminal Procedure Code, as well as Section 138 of the Evidence Act. The same are extracted hereunder:

Section 311, Code of Criminal Procedure

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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.

*Section 138, Evidence Act 138. **Order of examinations** - witnesses shall be first examined-in- chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

The examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

***Direction of re-examination** - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."*

A conspicuous reading of Section 311 Criminal Procedure Code would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression "any" has been used as a pre-fix to "court", "inquiry", "trial", "other proceeding", "person as a witness", "person in attendance though not summoned as a witness", and "person already examined". By using the said expression "any" as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Criminal Procedure Code and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-

examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Criminal Procedure Code. It is, therefore, imperative that the invocation of Section 311 Criminal Procedure Code and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and reexamination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?*
- b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate,*

inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and reexamine any such person.

d) 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 for such facts, which will lead to a just and correct decision of the case.

e) 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.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if

proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) 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. 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 Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

Coming back to the peculiar fact situation of the present case and respectfully following the law laid down by the Hon'ble Supreme Court as well as this Court, in the judgments referred to hereinabove, it can be

safely concluded that the learned trial Court has rightly exercised its powers under Section 311 Cr.P.C., while passing the impugned order.

Further, during the course of hearing, learned counsel for the petitioner could not point out any kind of prejudice that might have been caused or likely to be caused to the petitioner, therefore, the impugned order deserves to be upheld, for this reason as well.

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 the instant criminal revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

Resultantly, with the above-said observations made, the present criminal revision petition stands dismissed, however, with no order as to costs.

20.10.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE