

CRR-579-2015 (O&M)

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

**CRR-579-2015 (O&M).
Decided on: September 1, 2015.**

Rakesh Kumar

.. Petitioner(s)

VERSUS

State of Punjab

.. Respondent(s)

*** * ***

CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

*** * ***

**PRESENT Mr.A.S.Sullar, Advocate,
for the petitioner.**

Mr.Jashan Preet Singh, AAG., Punjab.

**Mr.Shailender Sharma, Advocate,
for the complainant.**

M.M.S. BEDI, J. (ORAL)

This is a revision petition against order dated 11.2.2015 passed by the trial Court whereby the application under Section 311 Cr.P.C., filed by complainant Ramesh Kumar for summoning Nitish Kumar and Dharam Pal as witnesses stands allowed.

Counsel for the petitioner submits that in the garb of the impugned order, the complainant is being given an opportunity to fill in the lacunae to cause prejudice to the petitioner who along with others is facing trial. He has also argued that on earlier occasion also, a similar application was filed and that Rajesh Kumar PW.1, Gurdial Singh Inspector and PW Sardara Singh were allowed to lead

CRR-579-2015 (O&M)

additional evidence by way of cross-examination and at earlier stage also the prosecution had made an attempt to fill in the lacunae.

I have heard the learned counsel for the petitioner and gone through the facts and circumstances of the case. It appears that the accused who are facing trial in the present case had allegedly entered into a conspiracy pursuant to which Sandeep Singh and Jang Bahadur accused had committed murder of Rajesh Kumar on abetment by accused Rakesh Kumar. On a petition filed by the complainant in CRM-M-23886 of 2013 filed by the complainant, a direction was issued by the High Court directing the police to conduct further investigation and to file supplementary report. Thereafter, further investigation was conducted and supplementary report under Section 173 (8) Cr.P.C. was filed on 12.8.2014. Additional witness Rajni wife of deceased was included in further investigation. With an intention to read the statement under Section 161 Cr.P.C., for the purpose of evidence, I have seen her statement which includes that when her husband was murdered, Shiv Kumar Toni and Rakesh Mehta were seen near the place of occurrence armed with iron rod and baseball bat by Paramjit Singh and Simarjit Singh who have disclosed this fact to her. Nitish Kumar also allegedly told her that at the time of murder of her husband, said two other persons were seen by Sandeep Singh @ Sonu and two other persons. Shiv Kumar and Rakesh Mehta were on activa scooter and two other persons were running. She allegedly stated

CRR-579-2015 (O&M)

that Jang Bahadur had confessed before Dharampal that Shiv Kumar had entered into a deal with Rakesh Kumar for murder of her husband on payment of Rs.5 lacs but Rs.1,50,000/- only were paid later on. She had allegedly told all these facts to the Investigating Officer but he did not record her statement. Said Rajni whose statement under Section 161 Cr.P.C. was recorded during the course of further investigation, has already been examined as PW.20. While appearing as a witness she has stated about disclosure statement of Paramjit Singh and Simarjit Singh and that Nitish Kumar also told her the fact that he had seen the accused named and two other persons near the place of occurrence on the day of murder and at that time two accused were on activa scooter who allegedly narrated these facts to the police but they did not take any action.

Counsel for the petitioner has vehemently contended that on the basis of the improved statement of Rajni, the prosecution agency and the complainant want to incorporate false evidence by bringing in the testimony of Nitish Kumar and Dharampal to establish the extra judicial confession of the accused to Nitish Kumar who had allegedly told the incident to PW.20 Rajni. He has also informed that Dharampal has now been given up by the prosecution. The main argument of counsel for the petitioner is that other witness sought to be added as prosecution witness is none else but the nephew of the deceased. He being an interested

CRR-579-2015 (O&M)

witnesses is being sought to be brought as a witness with an intention to improve the story of the prosecution and to fill in the lacunae which is not permissible under Section 311 Cr.P.C.

I have considered the contentions of counsel for the petitioner and carefully gone through the circumstances of the case. It is important to note that from the very beginning the allegation of the complainant is that investigation has not been conducted in an impartial manner and the statements which were voluntarily offered by the witnesses during the course of investigation have not been taken into consideration to determine the culpability of the accused. The said fact is substantiated by the direction issued by this Court for further investigation which has led to the fresh investigation report under Section 173 (8) Cr.P.C.

The short question which is required to be determined, at this stage is only whether Nitish Kumar (Dharampal having already been dropped by the prosecution), should be permitted to be examined as a prosecution witness as has been ordered vide impugned order in the exercise of powers under Section 311 Cr.P.C. The said witness has been permitted to be examined on the basis of the statement of PW.20 Rajni who claims that Nitish Kumar is a witness of extra judicial confession and that he had never heard about the extra judicial confession of the accused. Nitish happens to be nephew of the deceased. Since Rajni has been permitted to be added as a witness after the supplementary challan

CRR-579-2015 (O&M)

and her statement is based upon the testimony of Nitish Kumar, a witness to the extra judicial confession, in that circumstances, statement of Rajni will be immaterial unless and until Nitish Kumar is examined and permitted to be cross-examined.

It is not out of place to observe here that the credibility of Nitish Kumar being an interested witness and he being a witness incorporated to introduce improvements can be tested by his cross-examination by the accused. His testimony tested on the conspectus of cross-examination would enable the Court to arrive at a just conclusion. It is always open to the accused to shatter the credibility of the witness by cross-examination. The rights of the petitioner stand safeguarded by the provisions of law as such, I do not find any ground to interfere in the impugned order permitting Nitish Kumar as additional witness expecting that fair opportunity would be granted to the accused to challenge the credibility of the witness regarding the relevancy, admissibility and authenticity of his testimony.

Counsel for the petitioner submits that a direction be given to the prosecution agency to conclude the prosecution evidence expeditiously as the prosecution agency with mala fide intention is delaying the proceedings as the petitioner has been in custody. Counsel for the petitioner apprehends that the examination of additional witness would be unnecessary delayed to cause prejudice to the petitioner.

CRR-579-2015 (O&M)

I have considered the said contention and I am of the opinion that the apprehension is misconceived. It will be open to the petitioner to make an application for examination of the prosecution witnesses Rajni and Nitish Kumar on one date for their examination/cross-examination in case the petitioner has got an objection to the piecemeal evidence. It is observed that if any such application is filed, the trial Court shall take into consideration the same and watch that defence of the petitioner, in any manner, is not prejudiced.

With above observations, the petition is dismissed.

(M.M.S.BEDI)
JUDGE

September 1, 2015.
rka