

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No.M-32539 of 2015 (O&M)
Date of decision : 25.05.2016

Vinod Kumar

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajeev Sharma, Advocate
for the petitioner.

Ms. Harsimrat Rai, DAG, Punjab
with H.C. Sanjeev Kumar.

ANITA CHAUDHRY, J.

This is a petition for quashing of the order dated 20.08.2015, vide which the application filed under Section 311 Cr.P.C. had been allowed. The prosecution was permitted to examine the mother of the deceased.

Jyoti was married to Vinod in October, 2011. Jyoti died in unnatural circumstances in the matrimonial home. There were burn injuries. Jyoti was taken to the hospital by her husband where she made a statement exonerating the family. A month later, she gave a detailed account of the incident and stated that she was beaten by her in-laws and diesel was poured on her and nobody in the family saved her but the neighbours came and saved her and it was the Sarpanch who took her in his vehicle to the Civil Hospital but they refused admission and she was shifted to Ludhiana.

The challan was presented against the petitioner. The trial had commenced when an application was moved by the prosecution under Section 311 Cr.P.C. for summoning the mother of the deceased. It had been stated that originally the report of the incident was given by Raj Rani to the police on phone and she knew all the circumstances and her statement was necessary to be brought on record.

The trial Court gave notice of the application to the accused and sought its reply and thereafter, upon hearing, allowed the application.

The counsel for the petitioner referred to the contents of the application, specifically to para no.4 and had urged that the prosecution wanted to examine the witness to fill up the lacuna and it was their own admission that there was a lacuna and there are number of judgments which say that the prosecution cannot be allowed to fill up the lacuna. Reliance was placed upon *Anurag Srivastava Vs. State of U.P. 2012(7) RCR (Criminal) 2357*, *Mohanlal Shamji Soni Vs. Union of India and another 1991 AIR (SC) 1346*, *Rajaram Prasad Yadav Vs. State of Bihar and another 2013 AIR (SC) (Cri) 1746*, *Hari Singh Vs. State of Haryana 2002(2) AICLR 259*, *Mannan Sk. and others Vs. State of West Bengal and another 2014(13) SCC 59* and *Salim Khan Vs. Shaista and others 2012(7) RCR (Criminal) 620*. It was urged that though the statement had been recorded but directions can now be given to not take the statement into account while deciding the trial.

The State counsel submits that the statement had been recorded in January, 2016 and final arguments have been heard and the case is fixed for orders. It was urged that her statement was necessary and the trial Court had rightly exercised the power and it is not a case of filling up the lacuna.

Having heard the counsel of both the sides and after bestowing a serious consideration to the issue raised, I find no merit in the submission. Section 311 Cr.P.C. gives wide powers to the Court to summon a witness or re-examine a witness who has already been examined and the word “any” which has been used as a pre-fix would also include a person who is not cited as a witness. The paramount requirement is just decision and for that purpose an additional person can be summoned under Section 311 Cr.P.C. The examination of the mother cannot be said to be filling the lacuna. It had been pleaded that she was the first person to inform the police on telephone and the daughter was close to her daughter and she had the knowledge of facts and what was going on between the husband and the wife. The Court considered her statement to be necessary and had summoned her. Her statement has already been recorded. The case is now fixed for final orders. I find no infirmity in the order passed by the trial Court. There is no merit in the revision and is dismissed.

25.05.2016
sunil

(ANITA CHAUDHRY)
JUDGE