

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

**Criminal Misc.No.M-3661 of 2016
Date of Decision: February 02, 2016**

Amir Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

Present: Mr.Vivek K.Thakur, Advocate,
for the petitioner.

Naresh Kumar Sanghi, J.(Oral)

Prayer in this petition, filed under Section 482, Cr.P.C., is for setting aside the order dated 22.01.2016 (Annexure P-5) passed by learned Additional Sessions Judge, Ludhiana, whereby the application filed by the applicant under Section 409, Cr.P.C., for transfer of the trial arising out of FIR No.325, dated 10.12.2009, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station, Jagraon, from the board of learned Judge, Special Court, Ludhiana to the Co-ordinate Court of competent jurisdiction, was dismissed.

The only argument raised by learned counsel for the petitioner is that after conclusion of the trial, the petitioner had submitted the memorandum of arguments under Section 314,

Cr.P.C., and thereafter, learned trial Court impressed upon the Public Prosecutor to move an application under Section 311, Cr.P.C., for re-examination/recalling of SI Charanjit Singh (PW-10) which would show that the learned Presiding Officer had the biased attitude towards the petitioner.

I have heard learned counsel for the petitioner and with his able assistance gone through the material available on record.

Before approaching this Court, the petitioner had filed an application under Section 409, Cr.P.C., before the Court of Session, Ludhiana, seeking the similar relief however, the same was dismissed vide order dated 22.01.2016 by making the following observations:-

“The prosecution has moved the application u/s 311 Cr.P.C., to recall PW retired SI Charanjit Singh as there is some contradiction in the statement, which was earlier recorded in the Court. The trial Court has got power u/s 311 Cr.P.C to re-examine any person already examined, of its own or on an application moved by the prosecution, if his evidence appears to it to be essential for just decision of the case. The doubt cannot be raised regarding the conduct of the trial Court just on the ground that such an application was

moved by the prosecution after the arguments were partly heard. The trial cannot be transferred just on the ground that the application u/s 311 Cr.P.C was moved at the belated stage. From the filing of such an application, it cannot be inferred that, the trial court is biased against the applicant or that he is not going to get justice from the said Court. So, this transfer application is hereby dismissed being devoid of merits. Summoned judicial file be returned. A copy of this order be sent to trial Court for information. This file be consigned to the record room.”

Section 311, Cr.P.C., reads as under:-

“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 was specifically asked to explain

whereby it could be inferred by this Court that learned Presiding Officer of the Court below had pointed out to the Public Prosecutor to move an application under Section 311, Cr.P.C., for additional evidence/re-examination/further examination of SI Charanjit Singh (PW-10) then he replied that in his application the said fact is mentioned but could not show from any other source or the document that it was pointed out by the Court below to the Public Prosecutor to move an application. Bare perusal of Section 311, Cr.P.C, would reveal that before pronouncement of the judgment, the Court has powers to 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.

In view of the provisions enshrined in Section 311, Cr.P.C., even if it is assumed to be correct that learned Presiding Officer had pointed out to the Public Prosecutor to move an application under Section 311, Cr.P.C., for recalling/re-examination of SI Charanjit Singh (PW-10) would not be a ground to assume that he had adopted a biased attitude towards the petitioner.

In the matter of **Monica** vs. **State of Rajasthan**, AIR
2010 SC 103, Hon'ble the Supreme Court held as under:-

“the apprehension of not getting a fair and impartial inquiry/trial is required to be reasonable and not imaginary, based upon conjectures and surmises. No universal or hard and fast rules can be prescribed for deciding the transfer application which has always to be decided on the basis of the facts of each case.”

The judgment cited by learned counsel for the petitioner in the matter of **Kanaklata** vs. **State of (NCT) of Delhi & Ors.**, 2015(3) SCC(Criminal) 295 is entirely on different footings. The facts of the said case are not at all applicable to the case in hand.

In view of the totality of the facts and circumstances of the case, no good ground is made out to exercise the jurisdiction by this Court to transfer the trial from the Court of learned Judge, Special Court, Ludhiana.

Dismissed.

February 02, 2016
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(Naresh Kumar Sanghi)
Judge