

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

**Criminal Misc. No. M-9443 of 2015 (O&M)
Date of decision: 03.05.2016**

Sonia Suhag

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Petitioner in person.

Mr. Sanjay K. Saini, AAG, Haryana
for respondent No.1 – State.

Mr. Manish Soni, Advocate
for respondents No.2 to 4.

Daya Chaudhary, J.

CRM-14189 of 2016

This application is for placing on record reply to application by way of short affidavit and Annexures P-15 to P-18.

Application is allowed and reply to the application by way of short affidavit and Annexures P-15 to P-18 are taken on record.

CRM-M-9443 of 2015

Petitioner-Sonia Suhag has filed the present petition under Section 482 Cr.P.C. for quashing of order dated 26.02.2015 passed by Additional Sessions Judge, Gurgaon, whereby, the application filed under Section 311 Cr.P.C. moved by the petitioner for summoning the

witnesses has been dismissed.

Briefly, the facts of the case are that the petitioner filed an application under Section 311 Cr.P.C. for summoning of additional witnesses mentioning therein that the evidence of said witnesses is necessary for just and proper decision of the case and no prejudice is going to be caused to the other side in case, the same is allowed but the aforesaid application was dismissed by Judicial Magistrate Ist Class, Gurgaon vide order dated 15.01.2015.

Aggrieved by the said order, the petitioner filed revision petition before Additional Sessions Judge, Gurgaon, which was also dismissed vide order dated 26.02.2015.

The present petition has been filed to challenge the orders passed by both the Courts below by raising various arguments.

Petitioner while appearing in person submits that the application moved by her has wrongly been dismissed without recording any finding as to how the summoning of those additional witnesses as mentioned in the application are not necessary for just decision of the case. The petitioner further submits that earlier also, she moved an application under Section 311 Cr.P.C. for producing documents and the same was allowed vide order dated 13.03.2012. Said order was challenged by the accused by way of filing revision petition before Additional Sessions Judge, Gurgaon, which was also dismissed. The petitioner further submits that both the Courts below have wrongly held that the matter has properly been investigated by

the Investigating Officer whereas the investigation was tainted as the Investigating Officer intentionally and *malafidely* has not cited the persons mentioned in the application as witnesses in the final report filed under Section 173 Cr.P.C. Even no reason whatsoever has been given while dismissing the application.

Learned counsel for respondents No.2 to 4 opposes the submissions made by the petitioner on the ground that earlier also, applications were moved on one pretext or the other just to delay the case. The purpose is only to fill up the lacuna, which have surfaced during the course of examination of the prosecution witnesses. Neither there is any relevancy nor it has been mentioned in the application as to how the examination of the witnesses sought to be summoned as additional witnesses is relevant for just decision of the case.

Heard arguments of the petitioner as well as counsel for respondents No.2 to 4 and have also perused the documents available on the file including the orders passed by the trial Court as well as the revisional Court.

The facts with regard to filing of an application under Section 311 Cr.P.C.; and its dismissal by the trial Court as well as the revisional Court are not disputed.

Section 311 Cr.P.C., which is relevant for resolving the controversy in hand, is reproduced as under: -

***“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 re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

As per provisions of Section 311 Cr.P.C., the Court is empowered, at any stage of inquiry, trial or other proceeding, to summon any person as witness or to examine any person in attendance, who has not been summoned as witness or to recall or re-examine any person already examined if it appears to the Court that his recalling or re-examination or summoning of any person is necessary for just decision of the case.

In the present case, during course of trial, an application was moved under Section 311 Cr.P.C. by the complainant for permitting her to place on record certain documents on the ground that those documents were handed over to the Police but they were not produced by the Police before the Court whereas the same are necessary for just decision of the case and the same was allowed on 13.03.2012. Said order was challenged by the accused in the revision petition, which was dismissed by Additional Sessions Judge, Gurgaon. Thereafter, another application was moved by the complainant under Section 311 Cr.P.C. whereby permission was sought to examine 16

witnesses to prove the details of bank account of Nirmala Devi, Daya Nand Suhag, other record regarding withdrawal of amount from ATM, her medical treatment record and also the record pertaining to the golden articles purchased from Sadar Bazar, Gurgaon. Apart from hand writing expert and the medical witnesses in the shape of Dr. Anang Dhir and Dr. R.N. Pal besides food and supply officer, Gurgaon were also sought to be summoned to prove the said documents, which were earlier allowed to be placed on record. After filing reply to the application, it was opposed on the ground that earlier opportunities were availed by the complainant to lead evidence but no step has been taken. It was also mentioned in the reply that the documents to be proved were not related to the case and during investigation, those documents could have been provided to the Police.

It is also not disputed that earlier application filed under Section 311 Cr.P.C. was allowed and certain documents were allowed to be placed on record but those documents were not proved and cannot be considered during trial being not proved.

Learned counsel for respondents No.2 to 4 has fairly submitted that respondents No.2 to 4 have no objection in allowing of the application in case, some stipulated time is given to conclude the trial but the purpose of moving of applications on two different occasions is misuse of process of law just to prolong the trial on one ground or the other.

No doubt the aim of every Court is to discover truth. Section 311 of the Code is one out of many such provisions of the Code which strengthen the arms of a Court. The same is used by the Courts to extract the truth in accordance with the procedure sanctioned by law. It empowers the Court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to be essential for just decision of the case. The words 'essential to the just decision of the case' are the key words. The power under Section 311 Cr.P.C. is wider and it is to be exercised by the Court if the Court forms an opinion that for the just decision of the case recalling or re-examination of the witness is necessary and no prejudice is going to be caused to the other party. The purpose is not to fill up the lacuna.

While dealing with Section 311 of the Code in **Rajendra Prasad vs. Narcotic Cell, 1999(3) RCR (Criminal) 440**, Hon'ble the Apex Court has explained as to what is lacuna in the prosecution, which is as under: -

“Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the

accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

Similarly, Hon'ble the Supreme Court in **Zahira Habibulla H. Sheikh and another vs. State of Gujarat and others, 2004(2) RCR (Criminal) 836** has described the scope of Section 311 of the Code, which is as under: -

“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

In the present case, while dismissing the application filed

under Section 311 Cr.P.C., no reason whatsoever has been recorded as to how there is no relevancy of summoning of witnesses for the just decision of the case. The grounds mentioned in the application were to be considered by the Summoning Court as simply saying that the purpose is to delay the proceedings is not sufficient to dismiss the application as the petitioner is not going to get any benefit by prolonging the proceedings. Moreover, learned counsel for respondents No.2 to 4 has fairly submitted that in case, some directions are issued by this Court to conclude the trial within some reasonable period, he has no objection in allowing of the examination of witnesses, who are necessary for just decision of the case.

Accordingly, the present petition is allowed and impugned orders dated 15.01.2015 passed by the Judicial Magistrate Ist Class, Gurgaon as well as 26.02.2015 passed by the Additional Sessions Judge, Gurgaon are hereby set-aside.

The trial Court is directed to conclude the trial by allowing the petitioner to examine the witnesses as mentioned in the application moved under Section 311 Cr.P.C.

It is also made clear that the trial Court shall proceed with the trial from the stage, it was left and conclude the same expeditiously preferably within a period of two months from the date of receipt of certified copy of this order.

03.05.2016
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(DAYA CHAUDHARY)
JUDGE