

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

CRR No.1094 of 2016 (O&M)

Date of Decision : 22.07.2016

Rajbir and others

.....Petitioners

Versus

State of Haryana and another

.....Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. R.A. Sheoran, Advocate
for the petitioners.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1-State.

FATEH DEEP SINGH, J.

This is a criminal revision preferred by accused/petitioners- Rajbir, Mahabir and Ramroop against an order dated 10th March, 2016 passed by the learned Additional Sessions Judge, Bhiwani, whereby it has set aside an order dated 29th October, 2015 passed by the Court of learned Chief Judicial Magistrate, Bhiwani, who had earlier dismissed an application under Section 311 Cr.P.C. moved by the State and which order the Revisional Court had set aside and allowed the application.

Heard Mr. R.A. Sheoran, Advocate for the petitioners and Mr. Munish Sharma, Asstt. Advocate General, Haryana for the respondent-State and perused the entire records of the case.

The brief allegations of the prosecution are that the accused

hatched a criminal conspiracy and prepared forged documents in order to cheat the State of Haryana after fraudulently obtaining cancellation certificates of the ration cards earlier issued on false averments. It was during the course of the trial, the prosecution had examined PW8-Gopal Singh, Sub Inspector who in his examination-in-chief has stated that no surrender certificate was issued by the Office of Food and Supply, Faridabad in respect of Ration Card No.889998 regarding which endorsement Ex.PW8/A was made by him in the Police application however, during his cross-examination he was confronted with Ex.D2-the surrender certificate of this ration card to which he admitted and thus, a contradictory stand was taken by the same very witness. Thus, it was on the basis of this, the prosecution had moved an application for recalling and re-examining this witness regarding this fact which was disallowed but was allowed by the Revisional Court.

Appreciating the submissions of the two sides, it is conceded to at the bar by the counsel representing the two sides that ample powers vest in the Court to examine re-examine or recall any witness at any stage and of course with the rider if the Court finds this evidence to be essential to the just decision and is the law as has been laid down in ***Criminal Appeal Nos.446-449 of 2004*** titled as ***Zahira Habibulla H. Sheikh and another Vs. State of Gujrat and others***, wherein it was also held by their Lordships that the lacuna in the prosecution is not to be equated with the fall out of an oversight committed by the counsel during the trial either in proceeding or in eliciting relevant answers from the witnesses and the same is subject to

rectification by use of this provision. By another views laid down in “**AG Vs. Shiv Kumar Yadav**” 2015(4) RCR (Criminal)12 and “**Hanuman Ram Vs. State of Rajasthan and others**” (2008)15 SCC 652 upon which larger reliance has sought to be placed by the counsel for the petitioner-Mr. R.A. Sheoran, Advocate, a close look at *Human Ram's case (ibid)* shows that it was remarked by the Hon'ble Apex Court that the determinative factor is to the effect whether it is essential to the just decision of the case and it was further held that provisions of Section 311 Cr.P.C. are not limited only for the benefit of the accused and it would not be improper exercise of the powers of the Court to summon a witness under this provision merely because the evidence supports the case of the prosecution and not that of the accused. Similarly, in *Shiv Kumar Yadav's case (ibid)* stress has been that this exercise of power and provision needs to be invoked by the Court in order to meet the ends of justice.

Since, the entire allegations revolve around the very issuance of cancellation or surrender certificates which was investigated by the PW8-Gopal Singh, Sub Inspector and who has initially denied having ever come across such a thing but subsequently, when confronted has admitted it so, which has led to the State Counsel seeking his re-examination to clear the contradiction. Thus, plainly speaking, there is no question for filling in lacuna in the prosecution story but is by way of efforts of the Court to unravel the truth and to come at a justifiable conclusion in this effort for dispensation of justice. It is not what is ultimate legal worth of this evidence but it will be certainly an essential one for the assistance of the

Court for judicious adjudication of the matter before it. Since the very factum of issuance of cancellation or surrender certificate is a contentious and moot issue which was earlier denied by the witness in his examination-in-chief and was subsequently accepted in his cross-examination, therefore, had necessitated it so. Rather, the learned trial Court has fallen into an error by holding that since there is contradiction in examination-in-chief and cross-examination, a witness cannot be re-examined on this ground by the aid of this provision. The learned Revisional Court had rightly appreciated that in the larger interest of the public, the same was necessitated to hold out that re-examination of this witness will be helpful for the learned trial Court to decide the case in a more appropriate and in a judicious manner. Thus, in the totality of what has been held by the Revisional Court, nothing illegal or perverse could be pointed out by the counsel for the revisionist in the orders under challenge. Rather, an attempt is sought to be made by the accused to subvert the unravelling of the truth.

The instant revision petition is hopelessly without merits and thus, stands dismissed.

Records of the trial Court be sent back.

July 22, 2016
Dpr

(FATEH DEEP SINGH)
JUDGE

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No