

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CRR No.1444 of 2016 (O&M)
Date of decision: April 22, 2016

Kamalkant Puri and others

...Petitioners

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.S. Cheema, Senior Advocate with
Mr. Jasreet Singh, Advocate for the petitioners.
Ms. Rajni Gupta, Addl. Advocate General, Punjab.

Rajan Gupta, J.

Challenge in the instant case is to order dated 30.3.2016, passed by the trial court, whereby application moved by the prosecution for examining the complainant as prosecution witness, has been allowed.

Mr. Cheema, learned senior counsel has assailed the order. According to him, despite numerous opportunities granted to the complainant, he did not appear. Court tried to procure his presence by issuing non-bailable warrants as well as initiating proceedings under section 82 Cr.P.C. Ultimately, evidence was closed by order on 8.2.2016. According to him, prosecution is merely trying to fill up lacunae in the case, which is at the stage of culmination. He has relied upon judgment reported as *Mohanlal Shamji Soni Vs. Union of India and another*, **1991 AIR (SC) 1346** and *Budh Ram Vs. State of Punjab*, **1996 (2)**

R.C.R. (Criminal) 270.

Prayer has been opposed by the State counsel. She submits that court has wide power to allow examination of a witness at any stage of the trial if his evidence appears to be necessary for just decision of the case. According to her, he is a necessary witness and there is no error with the order of the trial court by allowing the prosecution to examine said witness being complainant in the case.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

Vigilance Bureau registered instant FIR, wherein it was alleged that all accused had acted in connivance and withdrawn a sum of Rs.18,94,544/- from Syndicate Bank, Hoshiarpur without consent of complainant, who was Chief Director of the company. One of the accused being an Executive Engineer, offences under sections 13 (1) (d) (ii) and Section 13 (2) of Prevention of Corruption Act, 1988 were included in the FIR. Charges were framed by the court vide order dated 23.7.2015. During the course of trial the complainant failed to depose before the trial court despite numerous opportunities. It even issued non-bailable warrants for securing his presence. On his failure to appear, proceedings under section 82 Cr.P.C. were initiated. Ultimately, the prosecution evidence was closed by order on 8.2.2016. Thereafter, statements of the accused under section 313 Cr.P.C. were also recorded. At this stage, instant application was moved by the prosecution seeking to examine the complainant as a witness. Trial court allowed the application observing that the witness had put in appearance on his own and prosecution

wanted to examine him. Being complainant, his evidence was necessary for just decision of the case.

I find no infirmity with the order. Judgments in *Mohanlal Shamji Soni's case (supra)* and *Budh Ram's case (supra)* cannot help the case of the petitioner. No doubt, the trial is nearing culmination as statements under section 313 Cr.P.C. have been recorded. However, Section 311 Cr.P.C. confers vast powers on the trial court to examine a witness at any stage, if his evidence appears to be essential for just decision of the case. The prosecution witness sought to be examined is complainant in the matter. His evidence may be necessary for just decision of the case. No fault can, thus, be found with the order passed by the trial court. In judgment reported as ***Rajendra Prasad Vs. The Narcotic Cell Through its Officer in Charge, Delhi, 1999 (3) RCR (Criminal) 440***, the Hon'ble Supreme Court held as follows:-

“8. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under Section 311 of the Code or under Section 165 of the Evidence Act by saying that the Court could not fill the lacuna in the prosecution case'. A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are proved. A corollary of any such latches or mistakes during the conducting of a case cannot be understood as the lacuna which a court cannot fill up.

9. 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 trail 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.

10. The very same decision *Mohanlal Shamji Soni v. Union of India*, (supra) which cautioned against filling up lacuna has also laid down the ratio thus:

“It is therefore clear that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case.”

In the instant case, though the petitioner failed to depose before the court despite its best efforts and evidence of the prosecution was closed vide order dated 8.2.2016, he himself appeared before the trial court and prosecution moved an application seeking to examine him. I am of the considered view that examination of complainant even at the far end of the trial, would not amount to filling up lacunae in the prosecution case. On the other hand, his deposition may be necessary for

arriving at a just decision. Under the circumstances, there is no merit in the present petition. Same is hereby dismissed.

(RAJAN GUPTA)
JUDGE

April 22, 2016
'Rajpal'

Whether to be referred to reporter? Yes / No