

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

CRR No.2817 of 2015 (O&M).
Decided on:-15.03.2016.

Kuldeep.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. R.S. Sihota, Senior Advocate with
Mr. B.R. Rana, Advocate for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J.

Petitioner Kuldeep has filed the present revision petition impugning order dated 3.6.2015 passed by learned Additional Sessions Judge, Palwal whereby the application filed by him under Section 311 Cr.PC was dismissed.

Briefly stated, FIR No.435 dated 12.8.2014 under Sections 302 and 301 read with Section 34 IPC was registered against the petitioner and other accused. The FIR was registered at the instance of Hari Chand @ Lala son of late Ratan Lal, caste Gujjar, resident of village Pingore, Tehsil Hodal,

District Palwal. As per FIR, brother of complainant, namely, Mukh Ram @ Mukha after taking his dinner at about 9.00 p.m. had gone to the tubewell where they had planted paddy so as to irrigate it. After starting the electric motor, he slept there in the fields. On 12.8.2014 at about 7.00 a.m., when the complainant had gone to the tubewell along with tea for his brother Mukh Ram, he noticed that his brother was killed by giving blows with sharp edged weapon below the neck, left ear and on the neck below the year. Noticing the fact that his brother was drenched in blood, the complainant informed his family members. On receipt of information, his family members and other villagers reached the place of occurrence and the police was informed on telephone. The complainant has stated that Hira Bhati, his relatives and some other persons of the village are behind the killing of his brother because before this incident, Hira Bhati and his brother had killed Mahi Pal, who was son of complainant's 'Tau' (elder brother of father of complainant) by firing at him for which FIR No.156/14 under Sections 302 and 307 read with Section 34 IPC was registered. In the said FIR, deceased Mukh Ram was pursuing the case against the accused and he has been killed by the accused as they had a grudge against him.

While the trial in the case was continuing and the prosecution witnesses were being examined, an application under Section 311 Cr.PC for recalling and re-examination of PW5-Sukhbir Singh SI/I.O., Police Station Sadar Palwal was moved by accused Kuldeep. The basic ground for

recalling and re-examining PW5 refers that the petitioner has engaged a new counsel and some most important and essential material questions could not be put and examined to the said witness. However, the relevant extract of said application is reproduced as under:

“2. That when the applicant engaged new counsel in his case then by perusing case file, he noticed that witness PW-5 Sukhbir Singh SI/I.O. who was one of the I.Os. was examined on 12.03.2015 by his previous counsel but due to inadvertently some most important and essential material questions could not be put and examined to the above said witness which are very necessary and essential for the just decision of the case and if the above witness is not recalled for further examination in that eventuality/case serious prejudice would be caused to the accused persons and their valuable rights would be defeated which cannot be compensated in other means.”

Learned senior counsel for the petitioner has argued that apart from the fact that provisions of Section 311 Cr.PC are liberal in nature, case of the petitioner finds support from the judgment of Hon'ble Supreme Court in **AG Versus Shiv Kumar Yadav and another 2015(4) RCR (Criminal) 312**. He has further submitted that in case PW5-Sukhbir Singh is recalled for re-examination, no prejudice is going to be caused to the prosecution.

Learned State counsel, on the other hand, has argued that perusal of the impugned order shows that the petitioner has not engaged a new counsel, as stated in the application. Rather, he is continuing with the

case. He has further submitted that the application filed under Section 311 Cr.PC by the petitioner is completely silent as to which important and essential material questions the petitioner intends to put for examination of PW5-Sukhbir Singh.

I have heard learned counsel for the parties.

Perusal of the application under Section 311 Cr.PC filed by the petitioner shows that the same is totally silent as regard to which material questions the petitioner intends to put to PW5-Sukhbir Singh. Further more, plea of the petitioner that a new counsel in the case has been engaged to pursue the case is against the record. Record reveals that the same lawyer along with one more lawyer is pursuing the case of the petitioner. What is left to be cross-examined has not been spelled out in the application. PW5-Sukhbir Singh was cross-examined at length by Mr. Jeet Ram Poswal, Advocate on 12.3.2015 whereas the application under Section 311 Cr.PC was moved on 25.5.2015 through Mr. Devinder Singh, Advocate. Power of attorney executed in the name of Mr. Jeet Ram Poswal, Advocate i.e. original lawyer has not been withdrawn by the petitioner-accused and he is still representing the petitioner-accused.

Moreover, the judgment of Hon'ble Supreme Court in ***Shiv Kumar Yadav and another's case (supra)*** relied upon by learned counsel for the petitioner, rather, goes against him as in para No.29 of the said judgment, it has been held by Hon'ble Supreme Court that mere change of counsel

cannot be a ground to recall the witness. For ready reference, said para is reproduced as under:

“29. We may now sum up our reasons for disapproving the view of the High Court in the present case:

(i) The trial court and the High Court held that the accused had appointed counsel of his choice. He was facing trial in other cases also. The earlier counsel were given due opportunity and had duly conducted cross- examination. They were under no handicap;

(ii) No finding could be recorded that the counsel appointed by the accused were incompetent particularly at back of such counsel;

(iii) Expeditious trial in a heinous offence as is alleged in the present case is in the interests of justice;

(iv) The trial Court as well as the High Court rejected the reasons for recall of the witnesses;

(v) The Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unduly harassed;

(vi) Mere fact that the accused was in custody and that he will suffer by the delay could be no consideration for allowing recall of witnesses, particularly at the fag end of the trial;

(vii) Mere change of counsel cannot be ground to recall the witnesses;

(viii) There is no basis for holding that any prejudice will be caused to the accused unless the witnesses are recalled;

(ix) The High Court has not rejected the reasons given by the trial court nor given any justification for permitting recall of

the witnesses except for making general observations that recall was necessary for ensuring fair trial. This observation is contrary to the reasoning of the High Court in dealing with the grounds for recall, i.e., denial of fair opportunity on account of incompetence of earlier counsel or on account of expeditious proceedings;

(x) There is neither any patent error in the approach adopted by the trial court rejecting the prayer for recall nor any clear injustice if such prayer is not granted.”

Plea of the petitioner that no prejudice is going to be caused to the prosecution cannot be accepted more particularly when PW5-Sukhbir Singh has been exhaustively examined by Mr. Jeet Ram Poswal, Advocate. Thus, in the absence of any material in the application as to for what purpose, the petitioner intends to recall PW5-Sukhbir Singh for re-examination, the trial Court has rightly dismissed the application under Section 311 Cr.PC moved by the petitioner-accused.

Accordingly, affirming the impugned order, the present revision petition, being devoid of any merit, is dismissed.

Nothing observed above shall be construed as an expression of opinion on the merits of the case and the trial Court shall decide the case on the basis of availability of evidence.

March 15, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE