

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.3602 of 2016 (O&M)

Date of Decision: 16.12.2016

Pohla Singh @ Pohli

...Petitioner(s)

Versus

The State of Haryana

...Respondent(s)

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

Present:- Mr. Ashwani Verma, Advocate
for the petitioners.

Mr. Manish Bansal, DAG, Haryana.

HARI PAL VERMA, J. (Oral)

Petitioner-Pohla Singh @ Pohli has filed the present revision petition, impugning the order dated 12.9.2016 passed by learned Additional Sessions Judge, Fatehabad, whereby the application moved by the prosecution under Section 311 CrPC has been allowed and PW-1 Om Parkash has been ordered to be summoned for re-examination.

Learned counsel for the petitioner states that the prosecution has filed an application under Section 311 CrPC for summoning and re-examination of PW-1 Om Parkash, but there was no detail as to what material facts have been left by the prosecution and therefore, re-examination of Om Parkash is not necessary.

On the other hand, learned State counsel has argued that even if the application does not contain any detail, but the said argument has duly been raised by the public prosecutor during trial and since the said Om Parkash has not disclosed about deposit of samples and FSL report on 23.5.2014, his re-examination was necessary.

I have heard learned counsel for the parties and perused the paper book.

The relevant part of the application filed under Section 311 CrPC reads as under:-

“That in the above noted case PWs MHC Gobind Dass No.601 (Mob.No.9416343040) and EHC Om Parkash No.591 (Mob.No.9468146725) P.S. Ratia has already been examined. During their examination, the material facts have been left inadvertently by them. For a just decision of the case, the re-examination of said witnesses are essential and necessary.”

The application filed under Section 311 CrPC is silent and the prosecution has failed to mention as to what material facts have been left out by it and for what purpose, the said witness was required to be re-examined. PW-1 Om Parkash was already cross-examined by the defence and no fresh cause of action had arisen to re-examine him. Section 311 CrPC was enacted to enable the Court to find out the truth where any Court, while exercising its discretionary authority, at any stage of enquiry, trial or other proceedings, can summon or examine any person in attendance or recall or re-examine any person, already examined, who are expected to throw light upon the matter in dispute. But taking into

consideration the contents of the application, this provision cannot be invoked to fill up lacuna.

Therefore, for the reasons stated above, this Court finds that impugned order dated 12.9.2016 passed by learned Additional Sessions Judge, Fatehabad is not sustainable in the eyes of law.

Accordingly, the present petition is allowed and the impugned order dated 12.9.2016 is set aside.

December 16, 2016

AK

(HARI PAL VERMA)

JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No