

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 4459 of 2016
Date of Decision: 01.12.2016

Krishana

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.K.Ahluwalia, Advocate
for the petitioner.

ANITA CHAUDHRY, J(ORAL)

Petitioner has assailed the order dated 17.9.2016 passed by the Magistrate vide which the application filed under Section 311 Cr.P.C. had been dismissed.

The petitioner along with her husband and other relatives were challaned in FIR No. 237 dated 31.8.2012. The trial had commenced and the statement of the complainant had been recorded. An application under Section 311 Cr.P.C. was filed. It was pleaded that at the beginning of the trial it was Sh. K.L.Sharma, Advocate who was representing all the accused including the applicant but a new counsel had appeared for the applicant on 2.5.2016 and had filed his Vakalatnama and therefore, Mr. K.L.Sharma, Advocate could not conduct the case on her behalf. She has pleaded that her counsel could not appear on 19.5.2016 on account of his illness and on that day three witnesses were examined and cross-examined by Mr. K.L. Sharma, Advocate. It was pleaded that the applicant was a *pardanashin* lady and could not understand the procedure and she had not been given a

fair trial. A prayer for recall of PW-2 was made and it was pleaded that she had not been given an opportunity to cross examine the witness and several important questions had been left out and they wanted only PW-2 to be recalled.

The complainant filed its reply and pleaded that the petitioner/accused had earlier approached this Court with a petition under Section 482 Cr.P.C. seeking quashing of the FIR which had been dismissed on 25.4.2016 and this petition was a clear misuse of the process of law and the prosecution witnesses were present in the Court on 2.5.2016 and the accused were delaying the trial. It was pleaded that Mr. K.L. Sharma, Advocate had cross-examined the witnesses on behalf of all the accused and he had not made a statement that he was withdrawing his power of attorney on behalf of the applicant and the application has been moved only to delay the proceedings.

I have heard the counsel for the petitioner at great length.

Counsel for the petitioner submits that the trial Court has rejected their application as they had failed to disclose what questions were being put. It was urged that those questions could not have been disclosed in the application and Mr. L.S.Chahar, Advocate has filed his power of attorney on behalf of Krishna. The counsel refers to Annexure P-2. Counsel further submits that Geeta Rani respondent No. 6 is married to Suresh son of the complainant Shyamwati and Suresh had filed a divorce petition against Geeta and the present FIR was a counter blast and they could not put those questions to the witness and there is no intention to delay the proceedings.

Petitioner has filed this revision challenging the order passed

on the application under Section 311 Cr.P.C.

It needs to be noted that the remaining accused are the husband and other relatives of the applicant and they were being represented by one lawyer namely Mr. K.L.Sharma, Advocate who had cross-examined the witnesses on behalf of all the accused. Power of attorney (Annexure P-2) filed by the applicant shows that it had been signed by Krishna Singh whereas the name of the applicant in the memo of parties is mentioned as Krishana. Even in the Court below the petitioner is referred to as Krishana wife of Gopal Singh. No objection has been taken on the power of attorney. The additional lawyer had stepped in to represent the petitioner at the most. The power under Section 311 Cr.P.C. cannot be exercised to recall a witness to fill up the lacuna nor it can be allowed as an attempt to protract the trial. There is no reason for holding that any prejudice had been caused to the applicant because the witness was not recalled.

Even otherwise the revision could not have been filed against an interlocutory order. The Apex Court in ***Sethuraman versus Rajamnikam (2009) 5 SCC 153*** had clearly held that an order under Section 311 Cr.P.C. is an interlocutory order. The relevant part of the judgment reads as under:-

“Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only

defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed. ”

Petition is dismissed in limine.

**(ANITA CHAUDHRY)
JUDGE**

December 01, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No