

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-17667-2017 (O&M)

Date of decision: 28.7.2017.

Raka Ghira

... **Petitioner**

v.

U.T. Chandigarh

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Ms. Isha Goyal, Advocate for the petitioner(s).

Ms. Ashima Mor, Additional PP for UT Chandigarh.

A.B. Chaudhari, J.

Being aggrieved by order dated 1.3.2017 (Annexure P-10) passed by JMIC, Chandigarh, arising out of case FIR No.210 dated 24.7.2011, under Section 61/1/14 of the Punjab Excise Act, registered at Police Station Sector 11, Chandigarh, present petition has been filed by the original accused petitioner.

Learned Counsel for the petitioner assailing the impugned order submitted that the trial court committed a serious error in allowing the application under Section 311 Cr.P.C. that was filed on the third occasion when similar earlier applications were dismissed by the same court. She submitted that the petitioner is completely prejudiced because of the impugned order as the petitioner is working on a higher post in the Police Department and because of the pendency of the criminal case right from 2011, her service career is being affected. According to her, even according

to the prosecution allegations against the petitioner in the prosecution case are not about serious offence relating to the service in the police department or as the case may be. But the allegations are that a raid was conducted by the police (CBI) on 24.7.2011 at the residential house of the petitioner where other members of the family of the petitioner were also residing and in that raid, allegedly certain number of bottles of IMFL were found in the house. According to Learned Counsel for the petitioner, as a matter of fact, the petitioner and her members of family hold respective licences for possessing liquor and without collecting the licence and producing before the court, purely out of mala fide intention, challan was filed against the petitioner only with a view to ruin her career in the department. According to Learned Counsel for the petitioner, the criminal case was almost at the fag end and not only that even the statement of the petitioner under Section 313 Cr.P.C. was recorded by the trial court way back on 28.11.2016 and still by the impugned order, the trial court has brought the case to square number one, that too ignoring the earlier orders rejecting the same request twice. She submitted that there cannot be misuse of Section 311 Cr.P.C. and the power cannot be exercised as per whims and fancies. The impugned order is clearly arbitrary and does not at all answer the test of speedy trial, that too in a case under the Excise Act where what is provided is only a penalty by way of compensation to the State, if at all the offence is stated to have been proved and not sentence. Learned Counsel for the petitioner therefore submitted that on facts also, it is necessary to exercise the inherent power to prevent the abuse of process of law.

Learned Counsel for the petitioner has invited my attention to

the various dates and the manner in which the prosecution was conducted, so also the orders passed by the trial court rejecting the earlier applications and thus bringing the case back for no reasons.

Per contra, learned counsel for UT Chandigarh supported the impugned order and submitted that in the interest of justice, the same order can be passed and therefore no interference is required to be made.

Heard learned Counsel for the rival parties. It is necessary to extract the following salient features:-

<i>Date</i>	<i>Event</i>
24.7.2011	FIR No.210 registered for offence under Section 61/1/14 of the Excise Act.
12.5.2014	Charges framed against the petitioner under Section 61/1/14 of the Excise Act.
6.10.2014 5.12.2014	No witness examined; adjourned at the request of the prosecution
23.1.2015	PW1 partly examined, deferred for want of case property.
7.4.2015	One PW examined and APP asked for adjournment.
11.7.2015	PW ASI Rakesh Rasila asked for adjournment.
21.9.2015	None present for prosecution.
23.11.2015	None present for prosecution.
25.1.2016	PW4 examined. PW5 examined partly; deferred for want of record of the prosecution.
7.4.2016	PWs present but not examined.
6.8.2016	PW3 present and cross examined. No other PW present. APP sought date.
24.8.2016 30.9.2016	APP sought date; no PW present.
17.10.2016	PW6 examined; cross examination deferred. Last opportunity given to the prosecution.
10.11.2016	No PW present. APP sought date but the court closed the case for orders. The court fixed the case on 23.11.2016 for statement of the accused under Section 313 Cr.P.C.
23.11.2016	Application under Section 313 Cr.P.C. was filed.
7.12.2016	Said application was allowed as last opportunity. However no witness appeared despite allowing the application before the court nor examined on 20.12.2016.
10.1.2017	The trial court closed the prosecution case for evidence as no evidence was produced. Statement of the accused under Section 313 Cr.P.C. was recorded.

<i>Date</i>	<i>Event</i>
13.1.2017	The case was fixed for recording of defence evidence, one more application under Section 313 Cr.P.C. for the same purpose for which earlier was filed on 23.11.2016, was filed but the court recorded the statement of DW1 on the same day and the case was adjourned to 18.1.2017.
21.1.2017	Second application under Section 313 Cr.P.C. was dismissed by the court with reasons, which read as under: “... Moreover, by way of this application, the prosecution wants to examine Sh. Bhagat Sinbgh. Sr./ Scientific Officer, CFSL, Pune. But the report which this witness is going to be proved on file is already exhibited on the file. Therefore, the evidence of this witness is not necessary for just decision of the case. Hence, there is no need to examine this witness. There seems to be no merit in the present application and the same is hereby dismissed. ..”
27.1.2017	Third application under Section 313 Cr.P.C. for the same purpose was filed which was objected as not maintainable.
1.3.2017	The trial court passed the impugned order and allowed the application in ignorance of the reasons for rejection of the earlier two applications.

The conspectus of the above salient features in a case for possession of liquor bottles in the house clearly show that the prosecution by filing repeated applications has abused the process of law. This Court does not want to say that power under Section 311 Cr.P.C. could not be exercised on the third occasion for the same cause of action. However, looking to the reasons given in the earlier orders, to my mind, the trial court could not have, as a judicial propriety, ignored the fact that the prosecution has earlier on two occasions availed the opportunity of filing the applications under Section 311 Cr.P.C. for set of same reasons. This shows scant regard for the court orders and the court proceedings. In my opinion, this is nothing but abuse of the process of the court and the prosecution acted in clearly high-handed manner, that too in a case under Section 61 of the Excise Act where there is no sentence provided but what is provided is the payment of some fine to the Excise Officer indicated in the provision itself. It is not the allegation of the prosecution that any intoxicant other

than liquor was found. The power under Section 311 Cr.P.C. cannot be exercised as has happened in the instant case in a totally haphazard manner ignoring the fact that after statement under Section 313 Cr.P.C. was recorded even the defence witness was examined and what was required to be done was to complete the trial. However, the trial court for no reasons allowed the application ignoring the factual aspects, as stated above. In the result, present petition must succeed.

Hence, the petition is allowed. Rule is therefore made absolute in terms of the prayer clause which reads thus:-

“Petition under Section 482 Cr.P.C. read with 483 Cr.P.C. praying that this Hon'ble Court may be pleased to quashed/set aside the impugned order dated 1.3.2017 (Annexure P-10) passed by the learned Judicial Magistrate First Class, Chandigarh in case arising out of FIR No.210 dated 24.7.2011 registered under Sections 61/1/14 of the Excise Act at Police Station Sector 11, Chandigarh (Annexure P-1), whereby despite the earlier rejection of the application invoking Section 311 Cr.P.C. on the same cause of action, third application on the same premise and on the same purpose has not only been entertained but has been allowed by the learned Judicial Magistrate First Class, Chandigarh thereby resulting in a grave miscarriage of justice.”

28.7.2017.

kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No