

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

246

CRM-M-25165 of 2015

Decided on : 03.10.2017

Prakash Chand Saini

... Petitioner

Versus

Jai Parkash @ Parkash @ Raju

.. Respondent

CORAM : HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present : Mr.K.S.Khehar, Advocate
for the petitioner.
Mr.Y.D.Kaushik, Advocate for the respondent.

Arvind Singh Sangwan, J. (Oral)

Prayer in this petition is for quashing of the order dated 8.6.2015 (Annexure P/6) passed by the trial court dismissing application of the petitioner under Section 311 Cr.P.C. for re-examination of CW Rahul Dev in the complaint case filed by the respondent.

While issuing notice of motion, the following order was passed by this Court on 04.08.2015:-

“The present petition has been filed under Section 482 Cr.P.C. impugning the order dated 08.06.2015 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Faridabad in terms of which an application filed by the petitioner/complainant under Section 311 Cr.P.C. for recalling and re-examination of CW Rahul Dev in complaint No.130, dated 10.04.2009/01.07.2013 under Sections 406/420/467/468/471/384/506 IPC, registered at Police Station City Ballabgarh has been declined.

Counsel would *inter alia* contend that the application had been moved at the initial stage itself and even if the prayer made in the application is to be allowed, no prejudice would be caused to the accused as he would have every opportunity to confront CW Rahul Dev as regards his testimony to be recorded before the Court. It is further contended that the trial Court has not correctly appreciated the scope and ambit of powers under Section 311 Cr.P.C.

Notice of motion, returnable for 13.10.2015.

In the meanwhile, trial Court is directed to adjourn the matter to a date beyond the one fixed in the present case.”

Learned counsel for the petitioner submits that the application under Section 311 Cr.P.C. was submitted at the stage when the complainant's evidence is going on and in the application filed under Section 311 Cr.P.C, it was prayed that CW Rahul Dev needs to be re-examined for the purpose that Jai Parkash with whom there was an earlier compromise did not comply with the same and accordingly, the petitioner lost his service due to his statement and therefore, it is necessary to re-examine this witness to put him whether the affidavit of CW Rahul Dev was given or not as he is a witness to the aforesaid compromise with Jai Parkash.

Learned counsel for the petitioner has further submitted that the powers given to the court under Section 311 Cr.P.C. are wide powers which can be exercised at any stage of a trial including powers to recall and re-examine any such person already examined. The re-examination of CW Rahul Dev is essential for just adjudication of the case. It is thus, submitted that the petitioner has explained to the trial court the necessity to re-examine CW Rahul Dev as per the application filed under Section 311 Cr.P.C. It is also submitted that no prejudice will be caused to the respondent if the prayer is allowed.

On the other hand, learned counsel for the respondent has opposed the prayer on the ground that the same has been filed at a belated stage to delay the trial.

After hearing learned counsel for the parties, I find merit in

the submissions made by the learned counsel for the petitioner. It is not disputed that the application under Section 311 Cr.P.C. has been filed at a stage when the evidence of the petitioner is going on and the petitioner has explained the reasons that re-examination of CW Rahul Dev is required to ask him the relevant question about the affidavit and regarding the fact that he was a witness to the compromise effected between the petitioner and Jai Parkash as he later on resiled from compromise.

Accordingly, the impugned order dated 8.6.2015 (Annexure P/6) is set aside and petitioner is granted one opportunity to re-examine CW Rahul Dev.

Parties are directed to appear before the trial court on 01.11.2017 and the trial court will summon the witness CW Rahul Dev in accordance with law and grant one effective opportunity to the petitioner to re-examine the said witness.

[Arvind Singh Sangwan]
Judge

03.10.2017
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Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No