

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

**CRL. MISC. No.M-43886 OF 2016 (O&M)
DATE OF DECISION : 25th APRIL, 2017**

Reeta @ Nagin & others

.... Petitioners

Versus

State of Punjab

.... Respondent

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

* * * *

Present : Mr. Bhriugu Dutt Sharma, Advocate for the petitioners.

Mr. Daljeet Singh Virk, DAG, Punjab.

* * * *

A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with consent of the rival parties.

The trial Court allowed the application under Section 311 Cr.P.C. filed by the prosecution in respect of Dharamvir, Inspector on the ground that he was on Ex-India leave duly granted by the authorities.

Learned State counsel submits that DDR in respect of his leave etc. was put up before the trial Court.

Insofar as ASI Avtar Singh is concerned, no reason based on any evidence has been assigned for passing order of recall for the said witness.

Exercise of jurisdiction under Section 311 Cr. P. C. cannot be made in a casual manner. The prosecution ought to have placed on record the documentary evidence for satisfaction of the Court that Inspector Dharamvir had really being granted Ex-India leave and travelled abroad and was not available in India for the particular period and that have come back from abroad. That was the minimum that was

expected from the prosecution to produce on record the documentary evidence.

Insofar as the other witness is concerned, the learned State counsel submits that he was on medical leave. Even for that the documentary evidence ought to have been produced, particularly because the witness was government servant and, therefore, the Court ought to have inspected all that evidence before passing order under Section 311 Cr. P. C.

In that view of the matter, it will be appropriate for the trial Court to reconsider the whole matter by giving effective opportunity to the prosecution to produce the documentary evidence on record in respect of the grounds on which the order under Section 311 Cr. P. C. was sought.

In the result the petition is partly allowed. The impugned order is quashed and set aside. The trial Court shall reconsider the issue after giving effective opportunity to the prosecution to produce the satisfactory documentary evidence for recalling the witnesses under impugned order. The petitioners shall also be given opportunity to file appropriate reply. The decision shall be taken within fifteen days from the date of receipt of this order.

The petition stands disposed of with direction to the trial Court as aforesaid.

25th APRIL, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No