

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-5646 of 2017 (O&M)

Date of Decision: February 20, 2017

Sone @ Avtar and anotherPetitioners

Versus

Usha Mishra and anotherRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Saurabh Bhardwaj, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

The petitioners are facing trial in Criminal complaint case No.161 of 2014 titled as “Usha Mishra v. Sonu and others” under Sections 323, 326, 392, 506 and 120-B of the Indian Penal Code and which is pending in the Court of learned Judicial Magistrate Ist Class, Panchkula.

2. The instant petition has been filed under Section 482 of the Code of Criminal Procedure assailing an order dated 27.1.2017, Annexure P4, passed by the trial Court and in terms of which, an application preferred by the complainant under Section 311 of the Code of Criminal Procedure to summon and examine Shri SK Galhotra, Advocate has been allowed.

3. Learned counsel appearing for the petitioners would submit that the name of Shri SK Galhotra, Advocate did not find a

mention in the list of witnesses filed by the complainant. Such person had not been examined by the complainant at the stage of pre-charge evidence as also after-charge evidence. Accordingly, it is contended that the application preferred by the complainant under Section 311 of the Code of Criminal Procedure to summon Shri SK Galhotra, Advocate was nothing but an attempt to fill up the lacuna and to cause prejudice to the accused persons/present petitioners. Further argued that the application under Section 311 of the Code of Criminal Procedure had been filed with a malafide intent and only to prolong the trial proceedings. As per counsel, such material aspects have been overlooked by the trial Court while passing the impugned order.

4. Having heard learned counsel for the petitioners at length and having perused the pleadings on record, this Court is of the considered view that no intervention in the matter is called for.

5. Section 311 of the Code of Criminal Procedure reads as under:

“311. Power to summon material witness, or examine person present – Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just

decision of the case.”

6. A bare reading of the provision makes it apparent that a wide discretion is conferred on the Court to act as the exigencies of justice require. This Section enables and in certain circumstances, imposes on the Court the duty of summoning witnesses who would have been otherwise brought before the Court. Such power can be exercised at any stage of the trial. The power under Section 311 of the Code of Criminal Procedure should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It is well settled that power under Section 311 of the Code of Criminal Procedure should be exercised for the just decision of the case. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case.

7. In the facts of the present case, DW1 Sunita Sahu had deposed that at the time of the alleged occurrence, Banti i.e. son of the complainant, was under the influence of alcohol. In her cross-examination, she stated that Banti used to work as a Munshi to Shri SK Galhotra, Advocate.

8. The trial Court has exercised its discretion and has allowed the application under Section 311 of the Code of Criminal Procedure to summon Shri SK Galhotra, Advocate to appear in Court as a witness. Such discretion had been exercised apparently for the Court to arrive at a just decision in the case.

9. The impugned order is based on valid and cogent

reason and falls within the settled parameters for exercise of power under Section 311 of the Code of Criminal Procedure.

10. No merit. Dismissed.

February 20, 2017

SRM

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether speaking/reasoned? Yes/No
Whether Reportable? Yes/No