

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

CRR No.179 of 2016

Date of decision: 31st October, 2017

Rajesh Kumar and another

... Petitioners

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Davinder Kumar, Advocate for the complainant.

FATEH DEEP SINGH, J.

Through this invocation by way of criminal revision filed under Section 401 Cr.P.C. the petitioners Rajesh Kumar and Mahinder Singh have sought to challenge an order of learned Sessions Judge, Yamuna Nagar dated 21.12.2015 passed in FIR No.543 dated 17.08.2014 under Section 302 read with Section 34 IPC pertaining to Police Station City Jagadhri whereby the application moved under Section 311 Cr.P.C. by the accused petitioners for summoning of one Balwant Singh son of Laxmi Chand stood dismissed.

Upon hearing Mr. Saurabh Sharma, Advocate for the petitioners; Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of respondent No.1/State and Mr. Davinder Kumar, Advocate representing the complainant and on perusal of the records. Undisputedly, as per the own stand of the two sides, complainant Surinder Kumar got

recorded his statement (Annexure P1) that his nephew Balwant on 17.08.2014 at 7.30 p.m. had gone from Gulab Nagar for getting medicine from a chemist shop and the complainant himself was going to buy milk. When his nephew Balwant along with his friend Balwant Singh s/o Laxmi Chand were going towards Gulab Nagar Chowk around 7.40 p.m. in front of the fruit and juice shop of Mahinder Singh petitioner No.2, both the petitioners came from their back armed with ice-pick (sua) and inflicted injuries on the back of his nephew Balwant on various parts of his body repeatedly leading to his death after being rushed to the hospital. It is in consequence of the same, the present prosecution has been set into motion.

It was during the course of hearing of the matter after framing of charges when evidence was being recorded, the State had given up one PW Balwant Singh son of Laxmi Chand, who claims himself to be an eye-witness, on the ground of having been won-over by the accused. It was in consequence of the same, the accused present petitioners, had moved an application under Section 311 Cr.P.C. for summoning of this witness which stood declined by the impugned order of the learned Sessions Judge leading to the present petition. It would not be out of place to mention here that it was through order dated 16.04.2015 earlier an application under Section 311 Cr.P.C. moved by the prosecution side for producing on record MLR of Balwant (deceased) was allowed and it was subsequent thereto present application has been filed.

Contentions of learned counsel for the petitioners Mr.Saurabh Sharma, Advocate are that ample power vests with the Court in terms of Section 311 Cr.P.C. to summon a witness and thus, this witness Balwant Singh admittedly being an eye-witness, his presence before the Court is very much necessary and essential, which is stoutly opposed by learned State counsel on the grounds that it is the prerogative of the State counsel, who is master of his case, to come to the conclusion which of the witnesses were material to his case and thus, nothing is illegal in the orders in question.

Appreciating the submissions, the very provisions of Section 311 Cr.P.C. which are reproduced below to lay emphasis, shows that it is the sole judicial discretion of the Court at any stage to recall or reexamine any person even if he is already examined, if his evidence appears to be essential for the just decision of the case. Section 311 Cr.P.C. reads as follows:

“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.”

The impugned order itself shows that the learned trial Court has passed well reasoned and detailed order by reverting to the provisions of Section 311 Cr.P.C. holding that two witnesses of the prosecution have already testified and since it is the categoric stand of the prosecution that witness Balwant Singh has been won-over, did not deem it appropriate to examine the same.

Though learned counsel for the petitioners has sought to place reliance on '**Rajaram Prasad Yadav v. State of Bihar and another**' 2013(3) RCR (Criminal) 726; '**Rattan v. State of Haryana**' 1998(1) RCR(Criminal) 640; and '**Pranab Bishwas v. State of Punjab**' 2012(4) RCR(Criminal) 337 but the same do not factually come to his aid as in the said ratios there was giving up of witnesses by the public prosecutor as unnecessary in spite of their importance to the prosecution story. In the present case, the important witnesses which are essential to the just decision of the case for judicious adjudication and who happen to be the eye witnesses have been examined, does not necessitates examining of the remaining witnesses.

Apparently, what one can conceive from the stand of the accused petitioners is their all-out efforts in bringing about a witness to ensure that he remains hostile and could be of some assistance to the defence. If it is so, as it may be, the defence is within its rights to summon such a witness if it deems it essential. The very wording of Section 311 Cr.P.C. is purely to meet the ends of justice for strong and valid reasons and needs to be exercised with more care and caution so

that the witness so sought to be called for is essential for assisting the Court in giving about a judicious decision in the case. To the mind of this Court, neither the witness so sought to be examined is needed by the Court as no new evidence is required, and the Court below has rightly exercised its wide discretion by not opting for calling this witness as it did not deem it essential and necessary to call the same as it thought not proper for just decision of the case. Since it is the quality of the evidence which needs to be gone into and not the quantity. Impugned finding is a well reasoned one by the Court below and rather as it appears from the over-emphasis being laid by the petitioner side, the additional evidence so sought to be called for is as a guise to change the very nature of the case against the prosecution to which a Court cannot be a party and thus collude in any manner to help the case of the defence. Thus, none of the cited ratios do in any manner come to the aid of the petitioners. The impugned order certainly is correct appreciation of the law and requirements of the case and there appears to be neither any illegality nor perversity much less lack of propriety and the same needs to be upheld by way of dismissal of the present revision petition. Ordered accordingly.

Records be sent back.

(FATEH DEEP SINGH)
JUDGE

October 31, 2017

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No