

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.No.M-7980 of 2017(O&M)

Date of Decision: March 17, 2017

Parkash Chand & othersPetitioners

Versus

State of PunjabRespondent

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

Present: Mr.Jatinder Pal Singh Smagh, Advocate for the
petitioners.

<><><>

TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 of the Code of Criminal Procedure (for short “the Code”) assailing the order dated 9.1.2017 passed by the learned Additional Sessions Judge, Ferozepur and in terms of which an application moved by the prosecution under Section 311 of the Code for further examination of Head Constable Tikka Sahib Singh and Inspector Jaswant Singh has been allowed.

2. Brief facts that would emanate from the pleadings on record are that as per prosecution version, alleged recovery of 5 kgs. opium was effected from each of the accused/petitioners herein i.e. total 20 kgs. opium. As per prosecution version, four samples of 5 grams opium each were sent to Forensic Science Laboratory, Mohali through Head Constable Tikka Sahib Singh for analysis. Samples were sent through road certificate No.20/21

dated 14.1.2014. However, on 15.1.2014, the samples upon production before FSL, Mohali were returned by raising certain objections. The samples are stated to have been again sent on 16.1.2014 through road certificate bearing No.29/21 dated 16.1.2014 and were deposited with FSL Mohali on 17.1.2014. The application under Section 311 of the Code to recall Head Constable Tikka Sahib Singh and Inspector Jaswant Singh for examination was filed on the basis that due to inadvertence, factum of sending the samples on 14.1.2014 and return on 15.1.2014 were not narrated by the witnesses.

3. Learned counsel appearing for the petitioners has raised a solitary submission that the trial Court has erred in passing the impugned order and has overlooked the aspect that the application under Section 311 of the Code has been moved by the prosecution only to fill up the lacuna as PW1 Head Constable Tikka Sahib Singh has already been examined and cross-examined and in which he has stated as regards handing over the samples only on 16.1.2014 and even in his statement under Section 161 of the Code, there was no mention as regards samples having been sent earlier in point of time i.e. 14.1.2014 and same having been returned on 15.1.2014 upon objections having been raised.

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 the instant petition lacks merit.

5. The principles governing exercise of power under Section 311 of the Code are well settled. If evidence of any

witness appears to the Court to be essential for the just decision of the case, Court can exercise power to summon and examine or re-call and re-examine any such person. The power under Section 311 of the Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts which lead to a just and correct decision of the case. The exercise of such power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power of the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice.

6. Adverting back to the facts of the present case, PW1 Head Constable Tikka Sahib Singh had deposed that samples had been handed over to him on 16.1.2014 and he deposited the same with FSL Mohali on 17.1.2014 and furnished receipt to the SHO. Even the statement of prosecution witness SI Jaswant Singh, SHO is to the same effect. The trial Court while passing the impugned order has noticed that the factum of sending of samples earlier on 14.1.2014 and return on 15.1.2014 had not been mentioned by the afore-noticed two witnesses on account of inadvertence. The trial Court has rightly observed that the entries with regard to sending of samples on 14.1.2014 and return thereof on 15.1.2014 are in the record maintained at Police Station City, Ferozepur as well as with FSL Mohali and, as such, a false version in regard thereto cannot be set up.

7. It has gone uncontroverted that prosecution witness SI Jaswant Singh, SHO is yet to be cross-examined. The trial Court

has taken a view that by permitting further examination of PW1 Head Constable Tikka Sahib Singh and PW3 SI Jaswant Singh, SHO, no prejudice would be caused to the accused as the accused would get opportunity to cross-examine such witnesses.

8. Needless to observe that if there was no mention of sending of samples on 14.1.2014 and return of such samples on 15.1.2014 in the statements of the witnesses recorded under Section 161 of the Code, it would be open for the trial Court to draw the appropriate inference.

9. In the considered view of this Court, the impugned order does not suffer from any infirmity or illegality. The order has been passed as per settled principles governing exercise of powers under Section 311 of the Code.

10. No interference in the case is warranted.

11. Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

March 17, 2017
SRM

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