

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

**Criminal Revision No.1281 of 2017 (O&M)
Date of Decision: December 19, 2017**

Rajdev Singh

.....PETITIONER(s).

VERSUS

State of Punjab

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Divjyot S. Sandhu, Advocate
for the petitioner (s).

Ms. Seena Mand, D.A.G. Punjab.

SURINDER GUPTA, J.

Heard.

This is revision petition against order dated 21.03.2017 passed by Additional Sessions Judge-cum-Judge, Special Court, Kapurthala allowing the application of prosecution under Section 311 Code of Criminal Procedure (for short-Cr.P.C.).

The entire matter pertains to re-summoning of ASI Sukhdev Singh, who has been examined by the trial Court as PW1. Para 2 of the application under Section 311 Cr.P.C. by the prosecution reads as follows:-

“2. That in this case accused inflicted injuries to PW1 ASI Sukhdev Singh and he identified the accused but during cross examination he stated that he doesn't know the accused and did not identify the accused which

is an ambiguity and in order to remove the ambiguity, the reexamination of this witness is necessary as in his examination-in-chief, he clearly stated that the accused inflicted injuries to him.”

Perusal of examination-in-chief of this witness recorded on 16.12.2016 shows that he has stated that he was caused injuries by three occupants of Maruti Car who were apprehended at the spot and their names were disclosed as Rajdev Singh, Sukhraj Singh and Avtar Singh. In cross-examination, he has, however, stated that he had not identified the accused present in Court and do not know these accused.

On perusal of statement of this witness, I find that it does not suffer from any ambiguity. The persons, who have attacked the police party, were apprehended at the spot and were nabbed by the investigating Officer. Their identity has already come on file. This witness has already stated the names of the persons, who were arrested at the spot. The mere fact that he was not knowing or identifying these persons is a fact to be seen by the trial Court at the time of final decision of the case.

While allowing the application moved by the prosecution under Section 311 Cr.P.C., learned trial Court has observed in para 7 as follows:-

“Taking up the facts in hand, it is clear that the prosecution has examined ASI Sukhdev Singh as PW1. In examination-in-chief, PW1 ASI Sukhdev Singh identified the accused but during cross-examination, he stated that he does not know the accused and he did not identify the accused. The object under section 311 Cr.P.C. is to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for the just decision of

the case. Here in the present case, the applicant/prosecution should not suffer on account of mistake of learned Additional Public Prosecutor for State. Therefore, in view of the discussion made above, the application in hand is ordered to be accepted. Let PW1 ASI Sukhdev Singh be summoned for his re-examination for 03.04.2017.”

On perusal of the statement of PW1 ASI Sukhdev Singh, I do not find that prosecution will suffer on account of mistake of learned Additional Public Prosecutor, who conducted the examination-in-chief of witness. Whatever the witness stated in his cross-examination, was not in the hands of Additional Public Prosecutor, as such, he cannot be blamed for any lapse on his part. The scope of Section 311 Cr.P.C. is to call any material witness, whom the Court deems appropriate for the just decision of the case. In this regard, observation of Hon'ble Apex Court in case of ***Mohanla Shamji Soni Vs. Union of India and another 1991 AIR (SC) 1346*** in para 18 can be referred, which read as follows:-

“18. The next important question is whether Section 540 gives the court carte-blanche drawing no underlying principle in the exercise of the extra-ordinary power and whether the said Section is unguided, uncontrolled and uncanalised. Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed by the principle that underlines Section 540 namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it

should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties.”

Similar observations were also made by Hon'ble Apex Court in

AG Vs. Shiv Kumar Yadav and Anr. 2016(2) SCC 402.

The question, which arise for consideration in this case is as to whether recalling of ASI Sukhdev Singh is required for the just decision of the case. He was examined by the prosecution in support of its case and cross-examined by learned defence counsel. After completion of his statement, he has nothing more to say, as such, to term him as material witness, whose examination is further required under Section 311 Cr.P.C. will be a fallacy. It appears that learned trial Court got swayed by the application moved by the prosecution without considering that there is no ambiguity in his statement already recorded, making out any reason for his recall.

Keeping in view the above facts, I find merits in this petition.

Impugned order of learned trial Court is set aside and learned trial Court is directed to proceed further with the case and decide the same expeditiously as early as possible.

December 19, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>