

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

CRR-1333-2017

Date of decision-17.04.2017

Ashwani Kumar

...Petitioner

Vs.

Sardari Lal and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. H.K.Aurora, Advocate for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

The present revision petition has been filed under Section 401 of the Code of Criminal Procedure Code (in short 'Cr.P.C.') for setting aside the impugned order dated 18.03.2017 passed by learned Additional Sessions Judge, Jalandhar in FIR No.36 dated 03.04.2012 registered under Sections 306 read with Section 34 of Indian Penal Code (in short 'IPC') at Police Station GRP, Jalandhar whereby the application moved on behalf of the prosecution under Section 311 of Cr.P.C was declined by observing that the charge in the instant case was framed on 23.03.2013 and the prosecution has closed its evidence on 20.07.2016.

The purported inquiry report brought on record is the foundation of the FIR whereby the learned Inspector General of Police, Patiala had recommended the FIR to be lodged on the report prepared by Deputy Superintendent of Police-DW-1/A. That being so, this factual aspect of the matter is not in dispute.

Hon'ble the Supreme Court, while dealing with the scope of

Section 311 Cr.P.C and the power of the summoning Court, in 'Mannan SK. and others Vs. State of West Bengal and another', 2014 (13) SCC 59 has held the following:-

“The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide it's exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

Considering the fact that there is nothing on record to suggest that the FIR emanates from the record of the prosecution. Therefore, it is beyond the comprehension of the Court as to why the report was withheld. Otherwise, this Court feels that the report of the learned Inspector General of Police, Patiala (Annexure P-2) being the basis of the FIR bringing the same

on record by passing the order dated 18.03.2017. No prejudice will be caused to the case of the prosecution.

In the circumstance, finding no merit in the instant petition, same is dismissed.

(JITENDRA CHAUHAN)
JUDGE

April 17, 2017

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