

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

CRR-2414-2017(O&M)

Date of Decision:17.07.2017

Jai Parkash Mishra

.....PETITIONER

Vs.

State of Punjab

.....RESPONDENT

CORAM: HON'BLE MRS. JUSTICE LISA GILL

Present: Mr.Inderjit Sharma, Advocate for the petitioner.

LISA GILL J.(Oral)

The petitioner is aggrieved of order dated 03.01.2017 passed by learned Addl. Sessions Judge, Gurdaspur. Application under Section 311 Cr.P.C. filed by the accused-petitioner for recalling of two witnesses, namely, PW-1 Jagjit Singh and PW-5 Gaurav Kohli, for further cross-examination has been dismissed by learned trial Court.

The petitioner is being proceeded against for the offences punishable under Sections 302, 376 and 404 IPC in FIR No.12, dated 27.01.2015, registered at Police Station City Gurdaspur. As per the application (Annexure P-4), it is mentioned that during the cross-examination of the witnesses PW-13, PW-14 and PW-15, it was felt that certain facts which are essential for the proper adjudication of the case have not been brought on the file and certain points have been left out. These facts which are very essential, can be brought on record only by further cross-examination of PW-1 (father of the deceased victim) and PW-5 Gaurav Kohli, owner of the hotel, wherein the incident is alleged to have taken place.

Learned trial Court dismissed the said application while observing that both the witnesses PW-1 and PW-5 were subjected to lengthy cross-examination. It is mentioned that no specific reason for further cross-examination of the said witnesses is forthcoming in the application. It is observed by the learned Sessions Judge, Gurdaspur that until and unless the court is satisfied about the points on which further cross-examination of the witnesses is necessitated, it is not possible for the Court to recall the said witnesses on a vague ground that 'certain questions' were left to be asked. Aggrieved therefrom, the present petition, which is otherwise barred by limitation, has been filed.

Learned counsel for the petitioner vehemently argues that PW-1-Jagjit Singh PW-5-Gaurav Kohli were examined before the learned trial Court much prior to PW-13, PW-14 and PW-15. Certain discrepancies came to light when the abovesaid three witnesses deposed before the learned trial Court. It is, thus, necessary to iron out the said issues. The same is possible only if PW-1 and PW-5 are confronted with the discrepancies. Therefore, further cross-examination of PW-1 and PW-5 is necessary, in fact vital for the just and proper adjudication of the matter. He relies on the judgment of Hon'ble the Supreme Court in ***Rama Paswan and others Vs. State of Jharkhand***, 2007(2) R.C.R. (Criminal) 717. It is, thus, prayed that this petition be allowed.

I have heard learned counsel for the petitioners and have gone through the file with his able assistance.

It is to be noted that PW-1 is the father of the deceased, PW-5 is the owner of the hotel where the incident is stated to have taken place, PW-13 SI-Prem Kumar, who is the Investigating Officer of the case, PW-14, Sandeep is the waiter of the abovesaid hotel and PW-15 Aasha Rani is the sister of the

deceased. It is also relevant to note that while addressing arguments before this Court today, no such discrepancy/discrepancies as alleged has been pointed out in the testimonies of PW-13, PW-14 and PW-15, which requires clarification. There is no crystallization of the questions which the defence seeks to put to PW-1 and PW-5 on recall. Therefore, the contention of learned counsel for the petitioner that even if recalling of the said witnesses appears to be an exercise of filling up the loopholes or lacuna, it is permissible in view of the judgment of Hon'ble Supreme Court in **Rama Paswan's case (supra)**, is untenable. I am unable to accept this contention as the decision of the Hon'ble Supreme Court in **Rama Paswan's case (supra)** is not applicable in the facts and circumstances of the present case. The application in question is extremely vague and bereft of any details which are necessary for summoning of witness for their further cross-examination in exercise of the powers under Section 311 Cr.P.C. neither have the necessary ingredients been culled out at the time of arguments before trial Court. Argument raised before the learned trial Court as well as this Court is that 'certain questions' have to be put to PW1 and PW5 court without crystallizing the same or even revealing the purpose of the said 'questions'. Such obviously can not be a ground for recall of witnesses on an application under Section 311 Cr. P.C.

Furthermore, it is beneficial to refer to the observations of Honble the Supreme Court in **Rama Paswan's case (supra)** in para no.9 which reads as under:-

“As indicated above, the section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation: it is, that the court shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be

brought before the court. Sections 60, 64 and 91 of the Evidence Act, 1872 (in short 'the Evidence Act') are based on this rule. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence.

In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge."

It is doubtless that the power vested in the trial Court under Section 311 Cr.P.C. is wide and discretionary. However, the discretion is to be exercised within the parameters as laid down. The trial Court has to be convinced that the best available evidence has not come on record. It is in this and other situations which are not delineated in this order, that the trial Court can exercise its discretion for recalling any witness as it may deem fit.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or error apparent on record in the impugned order dated 03.01.2017 passed by learned Addl. Sessions Judge, Gurdaspur, which calls for interference by this Court in exercise of revisional jurisdiction.

Accordingly, the revision petition is dismissed.

There is a delay of 68 days in filing of this revision petition which further buttresses the observation of the learned trial Court that the application under Section 311 Cr.P.C. has been filed merely to delay in trial. Keeping in

view the fact that the matter has been decided on merits, the question of delay has been rendered academic.

(LISA GILL)
JUDGE

17.07.2017
Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No