

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

CRR-3042-2017 (O&M)

Date of decision: 30.8.2017

Sukhwinder Kaur and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Kanwar Satbir Singh, Advocate for the petitioners

JITENDRA CHAUHAN, J.

The present revision petition has been filed challenging the order dated 5.8.2017 passed by learned Additional Sessions Judge, Karnal vide which the application of the petitioners filed under Section 311 of the Code of Criminal Procedure (for short 'Cr.PC') for placing on record some documents (letters) by way of additional evidence and also to re-cross-examine PW2 and PW3, the prosecutrix and her mother respectively, was dismissed in case First Information Report No.69 dated 18.6.2016, registered under Sections 452 & 506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Women, Karnal.

It is asserted that a number of letters written by the

prosecutrix, prior to the registration of the case, were found in the bag of the accused Jaspal in the process of shifting from village Kheri Safarali to some other village. It is submitted that as the letters go to the root of the matter, therefore, it is essential to place them on record and prove them in order to find out the truth after recalling PW2 and PW3 for further cross-examination.

Heard.

In paragraph 23 of the judgment rendered in **Rajaram Prasad Yadav vs. State of Bihar and another 2013(3) RCR (Criminal) 726**, Hon'ble the Supreme Court has observed as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said 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 by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but

because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to

meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

In the present case, perusal of the impugned order shows the petitioners were represented by a counsel. PW2 and PW3, the prosecutrix and her mother were thoroughly cross-examined by the counsel for the petitioners. They had filed the application under Section 311 Cr.P.C. to place on record the letters written by the prosecutrix to accused Jaspal prior to the registration of the case, whereas it is silent where and when the mother of accused Jaspal had shifted. It was nowhere mentioned in the alleged letters as to when the aforesaid letters had been written by the prosecutrix. Section 311 Cr.P.C. was enacted to enable the Court to find out the truth whereunder any Court exercising its discretionary authority, at any stage of enquiry, trial or other proceeding can summon or examine any person in attendance or recall or re-examine any person already examined, who are expected to throw light upon the matter in dispute. In the impugned order passed by learned trial Court, it has been mentioned that earlier also an application had been moved on behalf of the mother of the victim under Section 311

Cr.P.C. for recalling her and her daughter for further deposition with the averments that at the time of making the deposition before the Court, they were under the pressure of police, but it was declined by learned trial court vide order dated 28.4.2017. Just thereafter, the accused by engaging a new counsel moved a fresh application through him.

The trial Court has rightly observed in the impugned order that the provisions of Section 311 Cr.P.C. however cannot be invoked to fill up the lacuna, if any. Since, in the case in hand, apparently, the application is a result of an afterthought and is also vague in its contents, so, this court is not inclined to accept the same.

In the upshot, there is no illegality or perversity in the impugned order passed by the trial Court, which may warrant interference by this Court. As such, the present revision petition is dismissed in limine.

30.8.2017
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No