

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No. 13976 of 2014 (O&M)

Date of decision : 17.1.2018

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Rakesh Kumar

.....Petitioner

vs.

State of Punjab and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Sherry K. Singla, Advocate for the petitioner

Mr. Ramandeep Sandhu, Senior Deputy Advocate General,
Punjab.

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H. S. Madaan, J.

This petition under Section 482 Cr.P.C. for quashing of order dated 2.4.2014 passed by Sessions Judge, Sri Muktsar Sahib, vide which he had set aside the order dated 23.1.2013 resultantly allowing application under Section 311 Cr.P.C. filed by the accused respondents No. 2 to 5 for further cross examination of PW-1 Saroop Chand, has been filed by complainant Rakesh Kumar.

Briefly stated, facts of the case are that Anju Bansal, Saroj

Rani, Shashi Pal and Rinku Pal, had been facing trial in the Court of SDJM, Gidderbaha in FIR No. 128 dated 25.10.2008 for offences under Sections 384, 507, 511 IPC, registered with Police Station Gidderbaha.

During the course of trial, the accused moved an application under Section 311 Cr.P.C. for recalling witness Saroop Chand for further cross examination on some facts and points to be put to him for bringing out the actual facts. That application was opposed by the prosecution on the ground that the witness had already been subjected to lengthy cross examination and further application was not maintainable since it had not been disclosed what kind of material questions could not be asked. Learned trial Magistrate had dismissed the application with the following observations :-

“4. From the perusal of the file, it is evident that the challan presented on 15.1.2009 and charge was framed initially on 11.11.2009 and subsequently amended on 9.5.2011 by my Id. Predecessor under Sections 384//511/507 IPC and addition was made for Section 457 IPC. Thereafter PW 1/Saroop Chand was examined-in-chief on 8.6.2011 and his cross-examination was deferred. The said witness/ PW1/ Saroop Chand was cross-examined in the before lunch and after lunch session on 24.8.2011 by the counsel for the accused.

5. The accused have relied upon authority

Godrej Pacific Tech. Ltd. vs. Computer Joint India**Ltd. 2008 (3) RCR (Criminal) 897 (S.C.)** in which it

has been held that a witness who was examined, but could not prove the relevant documents cannot be re-examined. In the case in hand, this is not the situation. Though, Section 311 of Cr.P.C. provides wide power to the court. However, nothing has been mentioned as to what kind of material questions could not be asked. The power under Section 311 Cr.P.C. should be sparingly used and it should not be a ground for the defence to take the case for a de novo trial. Hence the application in hand is without merits and the same is dismissed. Now the case is adjourned for PWs for 12.3.2013.”

Feeling aggrieved, the accused had approached the Court of Sessions by way of filing a revision petition, which was accepted by learned Sessions Judge, Sri Muktsar Sahib, vide order dated 2.4.2014, resultantly, the order passed by the trial Magistrate was set aside and application was accepted. Hence this revision petition by the complainant.

Notice of the petition was given to the State and the accused.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record and I find that impugned order passed by the Sessions Judge, Shri Muktsar Sahib, is not sustainable, as he had wrongly set aside the order passed by the trial

Magistrate, dismissing application under Section 311 Cr.P.C. On being perused, the order passed by the trial Magistrate comes out to be well reasoned one, showing due application of mind in the light of facts and circumstances of the case. Whereas, learned Sessions Judge by wrong interpretation of law, arrived at the conclusion that application deserved to be allowed and the petitioner – accused be allowed to put certain questions in the cross examination of PW-1 Saroop Chand without disclosing as to what were those questions, which could not be asked in the cross examination when the witness had appeared earlier and what were those questions touching which aspect, which were being allowed. The reasoning given that no prejudice would be caused to the complainant/State if application under Section 311 Cr.P.C. is allowed, rather it would help the court to reach the just decision, is totally misconceived, to say the least.

Learned counsel for the petitioner has referred to authority **Sethuraman vs. Rajamanickam 2009 CriLJ 2247** in support of his contention that order passed by the trial Court was interlocutory and revision against said order was not maintainable under Section 397 (2) Cr.P.C. He further referred to authority **Sanjay and another vs. State of Haryana and another 2005 (1) RCR (Criminal) 15**, by coordinate Bench of this Court, wherein dealing with a situation with respect to recalling of a witness when Additional Sessions Judge had refused to do so, the said order was held to be interlocutory order, observing that revision against that order was not maintainable.

In view of the above, the petition deserves to be accepted. The same is allowed. Resultantly, the impugned order passed by the trial Court is set aside and the order passed by the trial Magistrate dismissing the application under Section 311 Cr.P.C. moved by the accused is restored.

Lower Court record be returned at once, if it is still in this Court, alongwith a copy of the order.

(H.S. Madaan)
Judge

17.1.2018		
chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No