

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

126

CRM-M No.17125 of 2018

Date of Decision: April 25th, 2018

Harnek Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kirpal Singh Ahluwalia, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

This petition has been filed challenging the order dated 07.04.2018 passed by the Chief Judicial Magistrate, S.A.S. Nagar, Mohali, whereby application under Section 311 Cr.P.C. preferred by the prosecution for permission to recall PW-5 Daljit Singh for further cross-examination has been allowed by imposing the cost of ₹5,000/-.

It is the contention of learned counsel for the petitioner that the petitioner is an accused in FIR No.299 dated 19.12.2012 under Sections 406, 419, 420, 465, 467, 468, 471, 506, 120-B IPC. He contends that various opportunities were granted to PW-5 Daljit Singh to appear in Court and even an undertaking was given by his mother namely Rajwant Kaur-respondent No.2 that he would appear before the Court but despite that, when he did not appear, the Court was forced to pass an order closing the evidence of the prosecution. It is thereafter that an application under Section 311 Cr.P.C. has been filed for recall of the said witness namely Daljit Singh for further cross-examination. He contends that by moving an application under Section 311 Cr.P.C., the prosecution intends to fill in the lacuna, which cannot be permitted. In support of this contention,

State of Haryana 2002 (2) R.C.R. (Criminal) 316.

I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the impugned order as also the judgment.

Provisions of Section 311 Cr.P.C. are very widely termed giving widest possible powers to the Court with an intent to do justice. As a matter of act, the first part of Section 311 Cr.P.C., when read, may be discretionary but the second part of the Section mandates the Court to do a particular thing in a particular manner in given circumstances as laid down therein. The said decision is dependent upon the facts and circumstances of each case.

Keeping in view the facts and circumstances of the present case, especially in the light of the fact that till date statement of the accused had not been recorded under Section 313 Cr.P.C., it would be difficult to accept the contention of counsel for the petitioner that the application has been moved with an intent to fill in the lacuna. As is apparent from the order dated 07.04.2018 which has been passed by the Chief Judicial Magistrate, Sultanpur Lodhi, the requirement of Section 311 Cr.P.C. stands fulfilled. The judgment, on which reliance has been placed by the counsel for the petitioner, is not applicable to the present case on facts as in that case, the observations of the Court came with reference to the situation as existed in that case, according to which statements under Section 313 Cr.P.C. stood recorded of the accused, which is not the position in the present case.

Finding no illegality in the order impugned, the present petition do not call for any interference in the impugned order.

The petition, therefore, stands dismissed.

April 25th, 2018
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No