

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M No.31716 of 2014 (O&M)

Date of Decision: 24.08.2018.

Dalbir Singh

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Gagandeep Singh, Advocate for
Mr. A. S. Manaise, Advocate
for the petitioner.

Mr. M.S. Naryal, DAG, Punjab.

RAJ SHEKHAR ATTRI J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C, praying for quashing of order dated 31.05.2014 passed by learned Additional Sessions Judge, Gurdaspur thereby upholding impugned order dated 23.05.2013 passed by Judicial Magistrate Ist Class, Gurdaspur, whereby application under Section 311 Cr.P.C. filed by the petitioner to grant an opportunity to tender the report of hand writing expert have been declined.

It is submitted by the learned counsel for the petitioner that the report of the hand writing expert of the Forensic Science Laboratory, Punjab (Annexure P-1) was already on the record but inadvertently the same could not be tendered into prosecution evidence. Even otherwise, the report of FSL is per se admissible in evidence under Section 293 Cr.P.C. Therefore,

taking into consideration this report will help the trial Court to reach a conclusion.

I have heard the learned counsel for the parties and gone through the record.

Under Section 311 Cr.P.C. the Magistrate has wide powers regarding examination of material witness during the course of trial at any stage. The only criteria for exercise of this power is that it should appear to the court that the evidence is essential to the just decision of the case. The provision is intended to be wide in view of the repeated use of the word “any” throughout its length. Interest of justice demands that in the facts of the case, the Magistrate should have been allowed the additional evidence to be led under Section 311 of the Code as prayed by the appellant. On the basis of the evidence so recorded, the Magistrate might have proceeded to frame a charge under Section 494 IPC against the accused if the material on record justified it.

Hon'ble Supreme Court in *Zahira Habibullah Sheikh and another v. State of Gujarat and others*; 2006 (2) RCR(Criminal) 448 has held in paras 25 and 26 as under:-

“25. In this context, reference may be made to Section 311 of the Code which reads as follows:

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

The section is manifestly in two parts. Whereas the word used in the first part is “may”, the second part uses “shall”. In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject.

There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an

improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding under this Code”. It is , however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the decision conferred is to be exercised judiciously, as the wider the power greater is the necessity for application of judicial mind.”

Finding merits in the case set up by learned counsel for the petitioner, the present petition is allowed and the impugned order dated 31.05.2014 passed by the learned Additional Sessions Judge, Gurdaspur (Annexure P-5) as well as order dated 23.05.2013 passed by learned Judicial Magistrate Ist Class, Gurdaspur (Annexure P-4) are set aside.

Resultantly, learned State counsel is allowed to tender the FSL report into evidence and the same would be put up to the accused while recording accused statement under Section 313 Cr.P.C., and accused, in turn, would be at liberty to lead defence evidence in respect of the additional evidence i.e. FSL report (Annexure P-1).

24.08.2018
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(RAJ SHEKHAR ATTRI)
JUDGE

whether speaking/reasoned
whether reportable

Yes/No
Yes/No