

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

285

CRM-M-33658-2016

Date of Decision: July 19, 2018

Monty Bansal

...Petitioner

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR JUSTICE RAJ SHEKHAR ATTRI

Present:- Mr. B.S. Bhalla, Advocate
for the petitioner.

Mr. Saurav Khurana, DAG, Punjab.

Mr. A.S. Brar, Advocate,
for the accused/respondent.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has filed this petition under Section 482 of Criminal Procedure Code with a prayer for setting aside the order dated 09.09.2016 passed by the learned Sub Divisional Judicial Magistrate, Nihal Singh Wala, whereby dismissing the application filed under Section 311 for re-examination of PW4 Dr. Rajiv Gupta alongwith original record in case FIR No.12 dated 07.02.2013 registered under Sections 307, 324, 323, 148, 149 of Indian Penal Code at Police Station Nihal Singh Wala.

Learned counsel for the respondent placed on record copy of the statement of Dr. Rajiv Gupta, Rajiv Hospital, Moga, recorded on 24.07.2015. He produced certain documents but he did not produced the original record. Thereafter an application was filed on 22.07.2016 for re-examination of Dr. Rajiv Gupta. He was examined as prosecution witness and proved on record injury report of patient Monty Bansal. This

application was rejected by the trial Court by observing in para 4 as under:

“In view of the above said guidelines laid down by the Hon'ble Supreme Court, I do not find any material ground in the application moved by the prosecution for exercising the power under Section 311 Cr.P.C. The power under Section 311 Cr.P.C. has to be exercised when from the facts and circumstances it appears to the court that this power need to be exercised for the just decision of the case, which is not the case over here. Even otherwise, the challan in this case was presented on 06.03.2013 and skiagrams were also a part of the challan and this fact regarding which the present application in hand is moved, was well within the knowledge of the learned A.P.P. for the State. The delay of more than one year in moving the present application has not been satisfactorily explained by the prosecution. The prosecution in this case had ample of opportunities to inquire this fact from Dr. Rajiv Gupta, when he had appeared as prosecution witness, which was not done by it. The Hon'ble Supreme Court in Zahira Sheikh (Supra) had further held that no one has the right to delay the trial of the case on one pretext or the other. Right to speedy justice is the fundamental right of the accused as enshrined in the Indian Constitution. The Court must curb the tendency of the litigants, who tends to delay the trial by filing one application after the another on frivolous grounds.”

Heard. 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 allowed the additional

evidence to be led under Section 311 of the Code as prayed.

Hon'ble Supreme Court in 'Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & others', 2006(2) R.C.R.(Criminal) 448, has made following observations:-

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

"311. Power to summon material witness, or examine person present.

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 discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

To the mind of this Court examination of doctor is necessary for just decision of the case, therefore, impugned order suffers from illegality and is hereby set aside.

The petition stands allowed. Dr. Rajiv Gupta will produce all the original documents.

July 19, 2018
neeraj

(RAJ SHEKHAR ATTRI)
JUDGE

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