

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

CRM-M-33460-2014

Date of decision: 06.09.2018

Ashima Gupta

...Petitioner

Versus

Vineet Gupta and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vikas Bahl, Sr. Advocate with
Mr. N.K. Vadehra, Advocate,
Mr. RahatBir Singh, Advocate, and
Mr. Umaid Singh, Advocate,
for the petitioner.

Mr. Tejinder Joshi, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This is a petition that has been filed under Section 482 Cr.P.C. for setting aside the order dated 10.9.2014 (Annexure P-13) passed by the trial Court whereby application filed by the petitioner under Section 311 Cr.P.C. for summoning witnesses to prove the documents has been dismissed.

2. In a nutshell the facts are, that the petitioner filed a complaint on 23.10.2006 under Sections 406, 498-A, 120-B IPC against the respondents. It is alleged that on account of a matrimonial dispute which arose on account of inadequate dowry, the petitioner was thrown out from

her matrimonial home by the respondents. It was also contended that the matter was compromised on the intervention of the respectables of the society, but the harassment continued which led to the filing of the complaint. The trial Court after taking preliminary evidence, issued summons to the respondents to face trial under Sections 406, 498-A, 120-B IPC. Thereafter petitioner examined herself as CW-1 and sought to place on record various documents to substantiate her case. The documents that were sought to be relied upon were objected to by the respondents, as being inadmissible on the ground of mode of proof and late production. The petitioner thereafter filed an application under Section 311 Cr.P.C. to prove the documents, some of which were already on the record and some of which were marked, but the said application was objected to by the respondents and ultimately the same came to be dismissed by the impugned order on the ground that at the fag end of the case, the complainant has filed an application to summon 18 witnesses. While dismissing the application, it was also held that the complainant had availed of 8 opportunities for her evidence. Aggrieved against the dismissal of the said application filed under Section 311 Cr.P.C., the instant petition has been filed.

3 Learned counsel appearing on behalf of the complainant-petitioner herein submits that the application under Section 311 Cr.P.C. has been dismissed without taking into account that such application can be filed at any time during the course of trial to arrive at a just decision of the case. It is argued that a witness can be recalled and re-examined any number of times if so required, as Section 311 Cr.P.C. does not prevent further

recall. It is submitted that to prove the case that there was a demand of dowry and entrustment, certain bills are to be proved, along with transactions from the Bank accounts.

4 Per contra, Mr. Tejinder Joshi, learned counsel appearing on behalf of the respondents vehemently opposes the said petition by arguing that there has been concealment by the counsel for the petitioner insofar as it has not been brought to the notice of the Court that the petitioner complainant herein had availed of several *last opportunities* to lead evidence. In this regard attention of the Court is brought to the zimini orders to substantiate that the complainant has been delaying leading her evidence, i.e. to order dated 28.03.2011 wherein last opportunity had been granted to the complainant to lead evidence, as well as orders dated 03.08.2012, 08.09.2012, 21.12.2013, 29.01.2014 and 19.03.2014. It is also argued that the petitioner had earlier filed a complaint with the police in which none of the documents/ witnesses now sought to be summoned were mentioned and, therefore, the documents now sought to be exhibited are nothing but false and fabricated documents. It is also argued that when preliminary evidence was recorded by the trial Court none of the documents sought to be proved and exhibited were mentioned therein. It is argued that the trial Court had rightly dismissed the said application since it was nothing but an attempt to cover lacunas, which is not permissible.

5 I have heard learned counsel for the parties and a short question arises for determination is whether the petitioner ought to be allowed an opportunity to lead evidence by allowing the application filed under Section

311 Cr.P.C.

6 Admittedly, the matter has been pending before the trial Court since the year 2006 and in this Court after the year 2014.

7. Section 311 Cr.P.C. reads as under :-

“311. Power to summon material witness, or examine person present.---Any Court may, at any stage of any inquiry, trial or other proceedings 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 aim of the Court is to discover the truth of the allegations as set out. Section 311 Cr.P.C. is one of the provisions of the Code which allows a Court *to summon a material witness, or examine any person at any stage any inquiry, trial or other proceedings, if appears to the Court that his evidence would be essential for the just decision of the case.* The Court is also competent to exercise to such powers suo motu even if no such application has been filed. The only rider in exercising this power by the Court would be that there must be satisfaction that examination of such a witness is essential in order to arrive at a just decision. Reliance in this regard can be placed on a catena of judgments reported as *State of Haryana Vs Ram Mehar and Others, 2016(4) R.C.R (Criminal) 154,P. Chhaganlal DAga vs. M.Sanjay Shaw, 2004 SCC (Cri) 183, Mannan Sk & Ors. Vs. State of West Bengal &Anr. 2014(4) Recent Apex Judgments (R.A.J.)231,*

2003(3) R.C.R. (Criminal) 631 and **Baba Kashmira Singh vs. Mahindra & Mahindra Financial Services Ltd. 2014(1) DCR 456**. In the case of **Ram Mehar and Others (supra)** the Supreme Court while dealing with the issue of recalling a witness under section 311 Cr.P.C dealt with the term 'Fair trial' and observed that 'Fair trial' was is a sine qua non of [Article 21](#) of the Constitution of India.

8. The Supreme Court in **Rajaram Prasad Yadav Vs State Of Bihar & Anr. 2013(3) R.C.R. (Criminal) 726** culled out a few principles to be kept in mind while deciding an application under Section 311 Cr.P.C. Some of them being :-

- i) *"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.*
- ii) *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.*
- iii) *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.*
- iv) *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.”

9. In ***Rajendra Prasad vs The Narcotic Cell through its Officer-in-charge, Delhi 1999(3) R.C.R. (Criminal) 440*** the term lacuna was gone into and it was held “8. *Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.*”

10. In the present case, a complaint has been filed under Sections 406, 498-A, 120-B IPC on specific allegations that the petitioner herein was subjected to cruelty by the respondents on account of demand of dowry with a further allegation that the dowry articles have still been retained by the respondents and his family members. While dismissing the application, the Court took note of the fact that the complainant had availed of several

opportunities, some of them being last opportunities to lead evidence also holding that the application had been moved at the fag end of the trial. There is no doubt, the petitioner got herself partly examined on 10.06.2013 and on 5 subsequent occasions had sought her exemption from personal appearance or did not appear before the trial Court and adjournment was allowed subject to *last opportunity* before moving an application on 03.09.2014 under Section 311 Cr.P.C. This Court has to understand whether the trial Court has rightly dismissed the application. The petitioner at the very outset had mentioned that dowry had been given and when she tried to prove the same by placing the bills on record, an objection was raised regarding method of proof. These bills are essential to prove the case as set out, and for a just decision which can only be done in case the petitioner herein is allowed to lead additional evidence.

11. The petitioner seeks to summon persons from whom washing machine, T.V. Fridge, sarees, ladies' suites, Sofa set, gold items etc. etc. had been purchased as well as to prove that money had been withdrawn from the bank account No. SBP/ICICI Bank to prove withdrawal of money some of which handed over. The list of witnesses sought to be summoned is 18 in number and perusal of this list shows that there are several witnesses sought to be examined who are not relevant to the issue. Some are persons would prove the bills which have been issued either in the name of the petitioner or her father/ family members pertaining to purchase of T.V.,Fridge, clothing etc. etc. In the opinion of the Court, these persons are vital and material witnesses to prove the allegations as set out in the complaint and without

this Court allows, the Court would not be able to come to a fair decision regarding the allegations under Sections 498-A and 406 IPC.

12. Therefore, placing reliance upon a catena of judgments where it has been held that the Court if it is satisfied can allow additional evidence or call any witness at any stage of the trial, the impugned order is set aside. However, the list of witnesses that have been supplied and called for is limited to persons named at Sr. No. 1, 2, 3, 4, 5, 6 & 14. The petitioner is permitted two opportunities to summon and examine the said witnesses at her own cost and responsibility subject to payment of ₹ 10,000/- as costs to be deposited with the Punjab Legal Services Authority.

13. The petition stands allowed accordingly.

14. The parties are directed to appear before the trial Court on 20.09.2018.

06.09.2018

Satyawan

Whether speaking/reasoned

Whether reportable

(JAISHREE THAKUR)

JUDGE

Yes.

No.