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In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-39393-2017 (O&M)

Date of decision: 13.03.2018

Rasal Singh

..... Petitioner.

VS.

Hardev Singh and others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Kawaljyot Singh, Advocate,
for the petitioner.

Mr. Jasmandeep, Advocate,
for the respondents.

ARVIND SINGH SANGWAN,J.

Prayer in this petition is for setting aside the order dated 08.08.2017 (Annexure P5), vide which the application filed by the petitioner under Section 311 Code of Criminal Procedure, 1973 (for short 'Cr.P.C') for summoning of two additional witnesses, namely, Ramandeep Kaur and Sukhdev Singh, has been dismissed by the trial Court.

Brief facts of the case are that the petitioner has filed a criminal complaint (Anneuxre P1) under Section 302/34 IPC on 17.08.2009 with the allegations that the respondents-accused persons, on 08.04.2009 have forcibly gave poison to Amarjit Kaur, who, later on died in hospital on 11.04.2009.

Counsel for the petitioner has submitted that initially the petitioner gave information to the police, however, the police did not take any action and, thereafter, he has filed the present compliant. After the

petitioner got recorded his preliminary evidence, the trial Court summoned the respondents-accused persons and, thereafter, charges were framed against the accused persons on 28.01.2016. When the case was fixed for recording of post-charge evidence, the petitioner has filed an application under Section 311 Cr.P.C. with a prayer that Ramandeep Kaur, daughter of Amarjit Kaur, and her husband Sukhdev Singh are material witnesses and they may be permitted to be examined as an additional witnesses.

The respondents-accused persons contested the application and vide impugned order dated 08.08.2017, the trial Court dismissed the application.

Counsel for the petitioner has further submitted that it has come in the statement of PW-1 Rasal Singh-petitioner that the marriage of Ramandeep Kaur, was performed with Sukhdev Singh, just two days before the date of occurrence and this witnesses has further deposed that when Amarjit Kaur gain consciousness, she narrated the whole incident to her daughter Ramandeep Kaur and her husband Sukhdev Singh, therefore, these witnesses are necessary to be examined.

Counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court rendered in ***Mannan Sk. And others vs. State of West Bengal and another***, 2014 (4) R.C.R. (Criminal), wherein it is held that the aim of Court is to discover the truth and Section 311 Cr.P.C. is one of the many such provisions of the Code which strengthen the arms of the Court in its efforts to find out the truth by procedure sanctioned by law. It is also held by Hon'ble Supreme Court that the Court, under Section 311 Cr.P.C, has wide powers and the application should not be dismissed merely on the ground that it is filed, in order to fill-up the lacuna in the prosecution

evidence.

Counsel for the petitioner has further submitted that the trial Court has dismissed the application on two premises i.e. the complaint is pending since 2009 and the application is moved in the year 2016, without explaining of delay and secondly, in view of the fact that in the list of witnesses, attached with the complaint, names of Ramandeep Kaur and Sukhdev Singh are not mentioned. It is also submitted on behalf of the petitioner that period should be taken from the date of framing of charge i.e. 28.01.2016 and the Court has ample power to summon a witness even if his name is not mentioned in the list of witnesses.

Counsel for the respondents has submitted that the petitioner is seeking permission to record the statements of above two witnesses, without there being any such averments in the complaint.

It is further submitted that the deposition made by PW-1 Rasal Singh that Amarjit Kaur, in the hospital, had narrated the whole incident to Ramandeep Kaur and her husband Sukhdev Singh, is nowhere mentioned in the complaint and it amounts to improvement at a subsequent stage.

Counsel for the respondents further submitted that in Para 6 of the complaint it is rather stated that Sukhdev Singh was kept away from the house by complainant as the accused were also behind Sukhdev Singh and they apprehended, he may be murdered as well, therefore, the very purpose for which these two witnesses are sought to be examined is beyond the allegations made in the complaint itself.

Counsel for the respondents has further submitted that both these witnesses i.e. Ramandeep Kaur and Sukhdev Singh, are not cited as witnesses either in the complaint or in the list of witnesses attached to it,

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therefore, they are not relevant witnesses.

After hearing counsel for the parties, I find no merit in the present petition for the following reasons:-

(a) As per the statement of PW-1 Rasal Singh, deceased Amarjit Kaur, after gaining consciousness in the hospital, has narrated the whole incident to her daughter Ramandeep Kaur and her husband Sukhdev Singh, which did not find mention in the entire complaint, therefore, it is clear improvement;

(b) no purpose will be served by summoning these two witnesses as their role is neither described in the complaint nor they are cited as witnesses, in the list of witnesses;

(c) though, it is well settled principle of law that even if a witness is not mentioned in the list of witnesses and his statement is relevant, he can be summoned under Section 311 Cr.P.C. yet it is not disputed that even in the preliminary or pre-charge evidence, both these witnesses were never examined;

(d) though, there is no dispute about the ratio of law held by the Hon'ble Supreme Court in ***Mannan Sk.'case*** (Supra) that the Court has wide powers under Section 311 Cr.P.C. to examine an additional witness, re-call the witnesses for the purpose of finding the truth, even if it amounts to filling up of lacuna, or the application is filed at a belated stage, yet the facts in hand are entirely different as statement of PW-1 Rasal Singh is to the effect that that deceased Amarjit Kaur has narrated the incident to her daughter Ramandeep Kaur and her husband Sukhdev Singh, is an afterthought story as nothing has been proved on record to show that prior to the filing of the complaint, these two witness have ever approached

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police authority stating that Amarjit Kaur has been murdered by the accused-persons.

For the reasons stated above, I find no merit in the present petition and the same is dismissed.

However, nothing observed in this order shall have a bearing on the merits of the case.

13.03.2018
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(ARVIND SINGH SANGWAN)
JUDGE

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