

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

Crl. Misc. M-9500 of 2015 (O&M)
Date of Decision: February 14, 2018

Deeksha Arora

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. B.D. Sharma, Advocate
for the petitioner.

Mrs. Anju Arora, Addl. AG Punjab.

Mr. Mohit Jaggi, Advocate
for respondents No.2 to 4.

JAISHREE THAKUR, J. (Oral)

This is a petition that has been filed under Section 482 Cr.P.C. for quashing of order dated 07.03.2015 whereby, the learned trial court has declined the application under Section 311 Cr.P.C. for examining Pws Harinder Bali, Rakesh Kumar, who are eye-witnesses and SI Jatinder Pal Singh, who is Investigating Officer, during the trial arising out of case FIR No.359 dated 20.09.2008, registered at Police Station Phase-I, District Mohali, under Sections 406, 498-A of Indian Penal Code, and also the order dated 23.02.2015 whereby, the trial court has closed the prosecution

evidence.

In brief, marriage of the petitioner was solemnized with respondent No.2 on 05.11.2007. The said marriage could not survive the test of time, which resulted in registration of the aforesaid FIR by the petitioner.

During the trial of the case, the learned trial court closed the prosecution evidence by an order dated 23.02.2015. Thereafter, the prosecution moved an application under Section 311 of Cr.P.C. for granting permission to examine Harinder Bali, Rakesh Sharma and SI Jatinder Pal Singh, which application came to be dismissed by an order dated 07.03.2015. Being aggrieved, both the said orders have been impugned in the instant petition by the petitioner.

Learned counsel for the petitioner contends that without adopting coercive measure for securing the presence of aforesaid witnesses, the trial court straightway closed the prosecution evidence abruptly. It is argued that the trial court has dismissed the application filed by the prosecution under Section 311 Cr.P.C. without considering that these witnesses are material witnesses. It is also contended that the prosecution will be highly prejudiced in case, these witnesses are not allowed to be examined as prosecution witnesses. It is also argued that the learned trial court has failed to consider the statements of Harinder Bali and Rakesh Sharma recorded under Section 161 Cr.P.C. and has placed undue reliance on the fact that they were not named as witnesses in the complaint. Both of them are witnesses to the cruelty committed upon the petitioner, in whose presence the accused had demanded money for car and flat. It is submitted

that SI Jatinder Pal Singh, who had conducted the entire investigation of the case, is the most material prosecution witness.

Per contra, learned counsel appearing on behalf of respondents No.2 to 4 would contend that that instant case is nothing, but an abuse of process of the law. It is argued that the petitioner and respondent No.2 have already been granted divorce in the year 2009 and both of them have already remarried. It is submitted that the despite having availed numerous opportunities, the prosecution was not able to complete its evidence, therefore, its evidence was closed by order by the trial court. It is also contended that the witnesses sought to be examined by the petitioner are interested witnesses.

I have heard learned counsel for the parties.

The petitioner herein has challenged the two orders i.e. dated 23.02.2015 and 07.03.2015 by way of instant petition. By the impugned order dated 23.02.2015, evidence of the prosecution was closed by order by the trial court, while taking note of the fact that accused were charge-sheeted on 03.06.2010 and since then, ample opportunities had been granted to the prosecution to conclude its evidence. Whereas, by the impugned order dated 07.03.2015, application of the prosecution filed under Section 311 Cr.P.C. to examine Harinder Bali, Rakesh Sharma and SI Jatinder Pal Singh was dismissed by the trial court, while *inter alia* observing that name of Harinder Bali and Rakesh Sharma have not been mentioned in the complaint dated 24.06.2008 (Ex.P10) moved by the petitioner. Further, since the complainant and her parents have already been examined, there cannot be a better version of alleged cruelty coming from any other source.

Regarding Investigating Officer, the trial court has observed that alleged recovery of dowry articles has already been exhibited and recovery memo has been proved by the prosecution. At last, the trial court has observed that once the evidence of the prosecution has been closed by order, therefore, allowing the application under Section 311 Cr.P.C. would amount to review of the order, which the said court has no jurisdiction.

Perusal of the record goes on to show that instant FIR came to be lodged on 20.09.2008, challan was presented by the investigating agency on 08.06.2009 and charges were framed against the accused persons on 03.06.2010. After framing of the charges, statement of petitioner was recorded as PW1 and of Sanjeev Kumar Jain (Goldsmith) was recorded as PW2. Thereafter, Ruby Arora, mother of the petitioner was examined as PW3, however, before her cross-examination could be done, respondents No.2 to 4 herein preferred a petition bearing CRM-M-26983 of 2010 for quashing of the FIR, challan and charges framed, which petition came to be dismissed on 24.07.2012. Subsequently, they preferred SLP (Criminal) No.7851 of 2012 before the Hon'ble Supreme Court, which also came to be dismissed on 01.05.2014 and proceedings before the trial court remained stayed during this period. Perusal of order dated 18.07.2014 passed by the trial court goes on to show that after receiving the orders from the Hon'ble Supreme Court, the matter was fixed for 11.08.2014 for the prosecution witnesses. Thereafter, by the impugned order dated 23.02.2015, after examining the PW-3 and PW-4, prosecution evidence was closed by the order.

In the instant case, charges were framed against the accused

persons on 03.06.2010 and in the year 2010 itself, the accused persons have approached this court by filing CRM-M-26983 of 2010, challenging therein the FIR, challan and charges framed against them and thereafter, they approached the Hon'ble Supreme Court by way of SLP (Criminal) which came to dismissed on 01.05.2014. During this period from 2010 to 2014, the proceedings were remained stayed, which was not on account of the complainant, but on account of the accused persons, as noted.

The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

This court is of the considered view that both Harinder Bali and Rakesh Kumar are the material witnesses for the proper adjudication of the controversy involved in the instant case. Though their names have not been mentioned in the complaint of the petitioner herein, however, during the investigation of the case their statements were recorded under Section 161 Cr.P.C., which are part and parcel of the final report. So far as SI Jatinder Pal Singh (Investigating Officer) is concerned, his evidence would not be material, as recovery of dowry articles by recovery memo, has already been exhibited. So, the plea regarding examination of the Investigating Officer SI Jatinder Pal Singh is concerned, the same does not hold good. This court is of the opinion that no prejudice is going to be caused to the respondents

herein, if the petitioner is permitted to examine Harinder Bali and Rakesh Kumar as prosecution witnesses.

In view of the foregoing discussion, the petitioner herein is permitted only to examine Harinder Bali and Rakesh Sharma as the prosecution witnesses. The petitioner is directed to appear before the trial court on 05.03.2018, on which date the trial court would adjourn the case to some shortest possible date, at per its convenience and on that adjourned date, the petitioner would produce both the witnesses namely Harinder Bali and Rakesh Sharma, at her own responsibility/expenses. The trial court would make an endeavour to conclude the evidence of both these witnesses on a single day and if it does not seem feasible, the trial court is at liberty to adjourn the case to some other date. However, it is made clear that except the above two adjournments, no further adjournment shall be granted for this purpose. Since the instant FIR pertained to the year 2008, the trial court is directed to expedite the trial and make an endeavour to dispose of the case as expeditiously as possible.

Accordingly, the petition in hand is partly allowed and the impugned orders dated 23.02.2015 and 07.03.2015 are set aside to the above extent only.

The petition stands disposed of, with the aforesaid directions.

February 14, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No