IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.8371 of 2016
Date of decision: 18th January, 2018

Som Dutt

… Petitioner

Versus

State of Haryana

… Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Anshumaan Dalal, Advocate for the petitioner.

FATEH DEEP SINGH, J.

Through this invocation under Section 482 Cr.P.C. petitioner Som Dutt, who also happens to be accused in this case, has sought quashment of order dated 10.02.2016 (Annexure P4) passed by the trial Court of learned Sessions Judge, Rohtak whereby his application under Section 311 Cr.P.C. had been dismissed.

Heard Mr. Anshumaan Dalal, Advocate for the petitioner and perused the records of the case. During the trial of the present case, after the prosecution has examined the witnesses including PW9 Anant, the accused petitioner moved an application under Section 311 Cr.P.C. to recall PW9 Anant for further examination though another similar application for re-examination of the same very witness was also moved by the prosecution. Through the impugned order (Annexure P4), the trial Court dismissed both the applications. The petitioner accused, whose application too was dismissed, has come up in this petition.

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The very provisions of Section 311 of the Code of Criminal Procedure are hereby reproduced to lay emphasis:

> ***"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."*

From a plain reading of the same, it is emphatically clear that the power of Court to summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined is qualified by the requirement if his evidence appears to the Court to be essential for the just decision of the case.

It is the own stand of the petitioner that PW9 Anant Kumar, friend of Pankaj son of the deceased has been examined by the prosecution to prove murder of Saroj Bala, mother of Pankaj and has been comprehensively cross-examined. One of the grounds for examining this witness is that earlier he was not cross-examined on certain points but the same has never been elaborated, when it is apparent that the witness has been cross-examined at length and has already testified in totality. Rather it has been rightly observed by the Court below in the impugned order that the very purpose of moving the application is to

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ensure that this witness subsequently resiles from his earlier testimony and the trial Court has come to an end. Though reliance is sought to be placed on **'Zahira Habibulla H. Sheikh and another v. State of Gujarat and others' 2004(2) RCR (Criminal) 836** to hammer home the point that the object of provisions of Section 311 Cr.P.C. is to meet out justice. The trial Court has rightly observed and has correctly come to a conclusion that it is with the sole purpose to get the witness resiled to enable to get a favourable decision. Thus, the Court cannot act as a facilitator to undo justice and thereby impinge judicial conscience. Learned counsel for the petitioner could not bring about any convincing argument.

Even otherwise, as has been laid down in **'State of Haryana and others v. Ch.Bhajan Lal and others' 1992 AIR SC 604**, the provisions of Section 482 Cr.P.C. are to be sparingly used to meet the ends of justice. When such an order being purely to the mind of this Court an intermediatory order, a revision petition lies against such an order in view of the law laid down in **'Rajendra Kumar Sitaram Pande v. Uttam' 1999(1) RCR (Criminal) 800.** The petition being hopelessly meritless, stands dismissed as such in limine. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

January 18, 2018
rps

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

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