

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

Crl. Misc. No. M-7800 of 2018

Date of Decision: 21.03.2018

Jaggi Singh

.....Petitioner

vs.

State of Punjab

.....Respondent

BEFORE:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Jagraj Singh Khiva, Advocate,
for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

SUDHIR MITTAL, J.

An FIR viz. FIR No.149 dated 2.9.2011 was registered against the petitioner and one more person, namely, Jimmy Singla, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'). From the petitioner, a plastic can containing about 2.5 liters of intoxicant liquor was recovered and from the other person, namely, Zimmi Singla, 500 gms. of intoxicant powder was recovered. Thus, the petitioner is being tried for violation of Section 22 of the NDPS Act.

The final report under Section 173(2) Cr.P.C. was presented in Court on 17.7.2013, charges were framed on 12.8.2013 and the evidence commenced on 18.11.2013. During the course of trial, an application under

Section 311 Cr.P.C. was moved by the prosecution on the ground that SHO/SI Sher Singh had died and, therefore, ASI Piara Singh be permitted to be produced as a prosecution witness in his place. The said application was allowed allegedly on the concession given by the petitioner. Subsequently, another application dated 26.10.2017 was moved under Section 311 Cr.P.C. again on the ground of death of SHO/SI Sher Singh but this time MHC P.S. City-I Mansa was sought to be examined. He was required to prove an entry at Sr. No.1061 dated 3.9.2011 in register No.19, docket No.247 dated 8.9.2011 and DDA No.30 dated 2.9.2011. This application was allowed by the learned trial Court vide order dated 22.1.2018 and hence, the present petition for quashing of the said order which has been placed on record as Annexure P-12.

Learned counsel for the petitioner has submitted that aforementioned MHC P.S. City-I Mansa could have been examined when the first application under Section 311 Cr.P.C. was moved. Since the same was not done, a lacuna was left by the prosecution and the same cannot be permitted to be filled up by moving another application under Section 311 Cr.P.C. The submission is that provision for additional evidence has been provided to enable the Court to ensure that essential evidence is not left out as the same would assist the Court in arriving at a just decision. It is not meant for filling up lacunae in the case of the prosecution and, therefore, the trial Court was not justified in allowing the second application under Section 311 Cr.P.C.

Learned State counsel has argued that ASI Piara Singh was in judicial custody in some other case and was earlier also produced in Court

on production warrant. In any case, the said officer could not prove documents which were in custody of the MHC such as, entries in Register No.19, docket No.247 dated 8.9.2011 and DDA No.30 dated 2.9.2011. Thus, it is submitted that the second application under Section 311 Cr.P.C. was necessitated as the Public Prosecutor had committed an error by not examining the said MHC earlier and it was not a lacuna which was being sought to be filled up. The evidence sought to be proved by the MHC is an important link evidence and would facilitate the Court in arriving at a just decision.

Hon'ble the Supreme Court has held in **Rajendra Prasad vs. The Narcotic Cell through its Officer-in charge, Delhi, 1999 (3) R.C.R. (Criminal) 440** that an oversight committed by a Public Prosecutor cannot be equated with a lacuna in the prosecution and that a lacuna is an inherent wedge in the case of the prosecution. In the case of **Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) RCR (Crl.) 726**, it has been held by Hon'ble the Supreme Court that the power under Section 311 Cr.P.C. is very wide, though discretionary in nature, and should be utilized with an object of finding out the truth. If the Court is satisfied that it is essential to recall a witness for a just decision of the case, the power under Section 311 Cr.P.C. should be exercised.

In view of the law laid down by the Apex Court, I now proceed to examine the legality of the impugned order.

The learned trial Court has held that the documents sought to be proved were in the custody of MHC PS City-I, Mansa and could only be proved by him more so when SHO/SI Sher Singh had expired. It has also

been observed that some more prosecution witnesses remained to be examined and, therefore, no prejudice would be caused to the accused. The documents sought to be proved are relevant link evidence and would be essential for just decision of the case. This view of the trial Court cannot be said to be contrary to the ratio of judgments in **Rajendra Prasad's case** (supra) and **Rajaram Prasad Yadav's case** (supra).

Additional evidence can be permitted at any stage of the trial if it is necessary for a just decision and in the circumstances of this case, it cannot be held that there is an attempt to fill up the lacunae in the case of the prosecution.

For the aforementioned reasons, there is no merit in the present petition and the same is accordingly dismissed.

March 21, 2018
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(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes