

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 1856 of 2017 (O&M)

Date of Decision: 21.08.2018

Jaspal

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. B.S. Jatana, Advocate
for the petitioner.

Mr. Ramandeep Sandhu, Sr. DAG, Punjab.

SURINDER GUPTA, J.

Learned trial Court vide order dated 20.04.2017 allowed the application of prosecution filed under Section 311 Cr.P.C. to examine MHC Dharam Singh as prosecution witness. Operative part of order as contained in para 6 reads as follows:-

“6. From the perusal of the statements of PW5 ASI Prem Singh, the Investigating Officer and PW4 ASI Balwinder Singh who was working as officiating SHO of P.S. Shambhu at the relevant time, it is revealed that the case property of this case was deposited with MHC Dharam Singh on 14.06.2014, who on his transfer handed over the charge of this case property to MHC Kulwant Singh. The prosecution wants to summon and examine MHC Dharam Singh No.1367 to prove the above said fact. As such, his examination is essential for the just decision of this case. No prejudice would be caused to the accused

by the examination of this witness, as he will avail the opportunity to cross-examine him. In the facts and circumstances, the application filed by the Ld. Addl. P.P. for the State under Section 311 of the Cr.P.C. is allowed and MHC Dharam Singh No.1367 is ordered to be summoned and examined as a prosecution witness in this case to clarify the above said fact.”

2. Petitioner is facing trial in case bearing FIR No. 89 dated 14.02.2014, registered at Police Station Shambhu for offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985.

3. As per case of prosecution, contraband recovered from the petitioner (case property) was initially deposited with MHC Dharam Singh (No. 1367/Patiala) and was later on handed over to HC Kulwant Singh. This fact was disclosed by investigating officer ASI Prem Singh and officiating SHO/ASI Balwinder Singh. Being material witness examination of HC Dharam Singh was required to complete link evidence in this case.

4. Learned counsel for the petitioner has argued that prosecution had closed its evidence on 08.11.2016. Thereafter, statement of accused under Section 313 Cr.P.C. was recorded. Arguments were heard in part on 02.03.2017 in which learned counsel for the petitioner raised the issue that link evidence is missing in this case. In order to fill up the lacunae present application was filed on 14.03.2017.

5. Learned State counsel has argued that MHC Dharam Singh is a material witness. Trial Court under Section 311 Cr.P.C. is competent to summon at any stage of trial any person as witness if his evidence appears to be essential for just decision of the case. ASI Prem Singh and ASI

Balwinder Singh, who was working as officiating SHO of Police Station Shambhu have deposed that on 14.06.2014, case property was first deposited with MHC Dharam Singh, who later on handed over the same to HC Kulwant Singh, as such, MHC Dharam Singh was a material witness to depose about the deposit of case property in police station. It is not a case where petitioner has been taken by surprise as prosecution witnesses have already disclosed that case property was deposited with MHC Dharam Singh and they were duly cross-examined. It was a mere lapse that Dharam Singh was not examined before conclusion of prosecution evidence.

6. From the facts as discussed above, it is apparent that trial Court while allowing the application of prosecution under Section 311 Cr.P.C has found MHC Dharam Singh as material witness. The mere fact that application was moved after arguments have been heard in part or at the stage of defence evidence, is no reason to decline such application or curtail powers of Court to summon material witnesses. Learned trial Court has committed no error while exercising powers vested in it as per provisions under Section 311 Cr.P.C. Impugned order suffers from no legal or factual infirmity calling for any interference in this revision, which has no merit and the same is dismissed.

August 21, 2018

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No