

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

Criminal Misc. No. M- 8988 of 2018 (O&M)

Date of decision : March 01, 2018

Balwant Rai

.....Petitioner

Versus

Surjit Kaur

....Respondent

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Lakhwinder Singh Mann, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 03.02.2018 passed by learned Judicial Magistrate First Class, Shaheed Bhagat Singh Nagar whereby application under Section 311 Cr.P.C. moved by the complainant – respondent has been allowed.

Brief facts necessary for adjudication of the case are that criminal Complaint No. 38/1/16 under Sections 406, 498A, 323, 506, 120B IPC (Annexure P-1) was filed by the respondent against the petitioner and others. The accused were summoned by the learned trial Court to face trial. Application (Annexure P-3) was moved by the respondent – complainant for summoning the concerned clerk of the office of the Deputy Commissioner and the Senior Superintendent of Police, Nawanshahr in order to prove application dated 18.02.2015 moved by the complainant, application dated 24.12.2015 submitted by the complainant before the Senior Superintendent of Police, Nawanshahr, report of the SHO, Police Station Sadar Nawanshahr dated 15.01.2016 as well as remarks by the Senior Superintendent of

Police, Nawanshahr alongwith the compromise and the final report. It is specifically mentioned in the application under Section 311 Cr.P.C. that the inquiry report of the said police officials and the DC office are on the file of the case. This application was opposed by the accused while specifically contending that this application should not be allowed at such a belated stage as the complainant had failed to prove the said documents either in the pre-charge evidence or evidence after the charge. In reply dated 16.01.2018 (Annexure P-4), it is stated that the prosecution/complainant had been sleeping over its/her rights despite countless opportunities. It was, thus, prayed that the application under Section 311 Cr.P.C. be dismissed.

The learned trial Court vide impugned order dated 03.02.2018 while taking into consideration the facts and circumstances of the case, observed that there are sufficient reasons to summon the witnesses as above. Aggrieved therefrom, this petition has been filed.

Learned counsel for the petitioner vehemently argues that the stage at which this application has been moved is highly belated. Moreover, no satisfaction has been recorded by the learned trial Court to the extent that examination of the said witnesses is necessary for the just and proper adjudication of the case. It is submitted that recording of satisfaction by the learned trial Court to the effect that the documents are necessary for just and proper adjudication of the case is necessary and in the absence thereof the order is illegal and deserves to be set aside. Learned counsel relies upon the judgments of the Hon'ble

Supreme Court in **Vijay Kumar versus State of U.P. and another 2011**

(3) SCC (Cri) 371; Rajaram Prasad Yadav versus State of Bihar and another 2013(14) SCC 461 as well as decisions of this Court in **Janeshwar Dutt versus Sanjiv Kumar 2007 (2) RCR (Criminal) 628, Narinder Singh versus State of Punjab and others 2011 (5) RCR (Criminal) 563** and **Rajinder Kumar versus Vijay Kumar 2011 (2) RCR (Criminal) 696.**

I have heard learned counsel for the petitioner at length.

A perusal of the file reveals that the documents, which the complainant seeks to prove, are already present on the case file. The respondent – complainant filed a complaint under Sections 406, 498A, 323, 506, 120B IPC wherein allegations of ill-treatment and harassment meted out to her by all the accused are levelled. Allegations of demand of dowry, hostile atmosphere at the in-laws family as well as specific instances of ill-treatment meted out to her have been mentioned. Details of various panchayats convened for an amicable resolution of the dispute are also mentioned. It is specifically stated in para 9 of the complaint that the matter was reported to the police. In her statement before the learned trial Court annexed as Annexure P-2 with this petition, the complainant (CW1) has clearly deposed regarding numerous complaints submitted by her to the police as well as to the Deputy Commissioner, Nawanshahr.

Learned trial Court has specifically observed as under:-

“ In this backdrop, it is to be seen if there are sufficient reasons to summon the witnesses as mentioned above by the complainant for their examination. Perusal of case file

shows that in preliminary evidence complainant got examined CW5 Ms. Gurmeet Kaur, Clerk DC office Patiala who brought record regarding application dated 18.02.2015 moved by complainant Surjit Kaur and CW6 HC Suresh Kumar has brought record regarding application filed by the complainant against her husband and family members to SSP, Nawanshahr dated 24.12.2015. However, these witnesses were not examined in pre-charge evidence. Complainant has moved this application for examination of these two witnesses for the purpose of proving on record the complaints filed by the complainant to the DC, SBS Nagar and SSP, SBS Nagar. The documents which complainant wants to bring on record in pre-charge evidence are already on case file. These documents are required for just and proper decision of the case. More so, no prejudice is going to be caused to accused as accused will be provided opportunity to cross examine the witnesses. Thus, application under Section 311 Cr.P.C. filed by complainant is allowed. Application stands disposed of accordingly.”

The Hon'ble Supreme Court after considering various earlier decisions in the case of **Rajaram Prasad Yadav** (supra) has held as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of

rebuttal is given to the other party.

n) 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.”

In this backdrop, it cannot be said that the learned trial Court has exercised its power capriciously or in an arbitrary manner or that the documents sought to be proved are not necessary for the just and proper adjudication of the case, not being germane to the issue involved. The argument that the application under Section 311 Cr.P.C. should not have been allowed at a belated stage is of no avail to the petitioner in the given circumstances of this case.

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned order 03.02.2018 passed by learned Judicial Magistrate First Class, Shaheed Bhagat Singh Nagar, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Present petition is, accordingly, dismissed.

(Lisa Gill)
Judge

March 01, 2018
rts

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