

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

CRR-828-2018(O&M)

Date of decision:-7.3.2018

Oma Dutt Sharma @ Happy

...Petitioner

Versus

State of Punjab

...Respondent

**CORAM: HON'BLE MR.JUSTICE H.S.MADAAN**

Present: Mr.Deepak Bhardwaj, Advocate  
for the petitioner.

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**H.S. MADAAN, J.**

This revision petition is directed against the order dated 10.1.2017 passed by learned Additional Sessions Judge, Rupnagar vide which he had dismissed an application under Section 311 Cr.P.C. for recalling of PW3 ASI Baldev Singh so moved by accused Om Dutt Sharma, who is revisionist before this Court.

Briefly stated, facts of the case are that Om Dutt Sharma was booked by the police in FIR no.36 dated 26.3.2012 for the offences under Sections 21 and 22 of NDPS Act and 27 of Drugs and Cosmetic Act, registered with Police Station Kurali and he had been facing trial in the Court of learned Additional Sessions Judge, Rupnagar. During the course of said trial, statement of ASI Baldev Singh was recorded as PW3. The evidence of prosecution was closed. Statement of accused under Section 313 Cr.P.C. was recorded. The accused examined eight witnesses in

defence. Thereafter, he moved an application under Section 311 Cr.P.C. for further cross-examination of PW3 ASI Baldev Singh with regard to talk, which allegedly took place between accused Om Dutt Sharma, his brother Shambhu Dutt and ASI Baldev Singh on 24.9.2013 and 11.11.2013. That application was dismissed by the trial Court observing that it is not the plea of the accused that said talk is supportive of his defence plea or how and in what manner the same will serve his purpose and that recalling of PW3 ASI Baldev Singh shall not serve any purpose of applicant – accused as he will have to establish voice identity of the said witness by leading some other independent evidence and further applicant - accused had not placed on record the alleged recording to support that version. It was further observed that the application seemed to have been filed to delay the proceedings or with some other vested motive best known to the applicant-accused and recalling of PW did not appear to be essential for just decision of the case.

After going through the said order and hearing learned counsel for the petitioner, I do not find any illegality or infirmity in the said order. The petition has been filed belatedly. There is delay of 315 days in filing of the petition. An application under Section 5 of the Limitation Act has been filed for the reason that petitioner had instituted a petition i.e. CRR-1439 of 2017 against the impugned order, which was withdrawn as the date of cross-examination of ASI Baldev Singh in the order was shown as 11.11.2013, whereas in fact date of cross-examination was 11.11.2014 and this Court allowed the petitioner to file fresh petition after correction of various dates of cross-examination of ASI Baldev

Singh vide order dated 24.4.2017. This does not seem to be a very plausible and convincing ground for condonation of delay since the petitioner could have drawn the attention of the Court regarding the actual date though wrongly recorded in the order and I do not find sufficient reasons to condone the delay. Nevertheless on merits also, the petition is doomed for failure.

Section 311 Cr.P.C. deals with power of the Court to summon material witnesses. A very perusal thereof goes to show that the Court can 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. In that way it is the discretion of the Court to do so, which though is to be exercised in a judicious manner. Regarding the later part of the provision, it is mandatory for the Court to 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. Here the Court has clearly observed that recalling of the PW does not appear to be essential for just decision of the case and there was no ground to recall and re-examine the said witness, rather it was observed that the application had been filed very belatedly with a motive to prolong the proceedings. It has been taken note and even if the application is allowed, then the petitioner will have to establish voice identity of the witness by leading some other independent evidence. The trial Court was right in making such observations. Even if the application is accepted and PW3 ASI Baldev Singh is recalled for further cross-examination as prayed for

by the petitioner-accused, if he denies such conversation then voice sample of ASI Baldev Singh shall have to be taken and the same along with the CD sent to FSL to find out as to whether the voice said to be that of ASI Baldev Singh in the recording matches with his sample voice. Furthermore, the genuineness of the recording is also to be seen. The trial Court was justified in dismissing the application.

As regards the authority referred to by learned counsel for the petitioner **Rajaram Prasad Yadav Versus State of Bihar and another, 2013 AIR(SC)(Cri) 1746** by the Apex Court, the same deals with principles to be kept in mind while considering an application under Section 311 read with Section 138 of the Evidence Act. The case of the petitioner does not fall within four corners of any such principles laid down.

In view of the above discussion, no infirmity or illegality in the impugned order is found to be there which might have warranted interference by this Court while exercising revisional jurisdiction. Resultantly, the revision petition stands dismissed.

Copy of the order be sent to the trial Court for information and necessary action.

7.3.2018  
Brij

**(H.S.MADAAN)**  
**JUDGE**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**