

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

**Criminal Misc. No. M-61566 of 2018
Date of decision: 20.12.2018**

Mandeep Kaur

..Petitioner

Versus

Dr. Sneh Lata Sandhu

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Navjot Singh, Advocate
for the petitioner.

Daya Chaudhary, J.

Petitioner-Mandeep Kaur has filed the present petition under Section 482 Cr.P.C. for quashing of impugned order dated 03.11.2018 passed by the Additional Sessions Judge, Hoshiarpur in complaint titled as “Dr. Sneh Lata vs. Mandeep Kaur” wherein an application moved under Section 311 Cr.P.C. filed by the respondent to summon Jasvir Singh and Sandhya Rani as eye witnesses of the occurrence has been allowed by the trial Court.

Briefly, the facts of the case as made out in the present petition are that respondent filed a complaint under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 506 IPC against the petitioner. Complainant filed other complaint against her husband Dr. Majit Singh and four other persons under Sections 452, 506, 376, 511, 304 and 354 IPC, which is pending at the preliminary stage. During course of preliminary evidence, complainant herself stepped

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into the witness box as PW1 and instead of examining the witnesses i.e. Avtar Singh and Sohan Singh, one Renu was examined as CW-2. Said application filed by the petitioner under Section 311 Cr.P.C. has been allowed vide order dated 03.11.2018, which is subject matter of challenge in the present petition.

As per contents of the complaint, on the date of occurrence i.e. 14.01.2016, Jasvir Singh and Sandhya Rani were present in the dispensary along with other witnesses mentioned in the list of witnesses as well as in the complaint. Both the witnesses are material witnesses. The application for summoning two witnesses was filed to which, reply was also filed. In the reply, contents of the application were denied stating that in the complaint nowhere it was stated that Jasvir Singh and Sandhya Rani were also witnesses to the occurrence. After commencement of the trial, complainant herself appeared as witness before the trial Court and in her examination-in-chief, she never disclosed that said persons were also witnesses to the occurrence. Said application filed under Section 311 Cr.P.C. has wrongly been allowed.

Learned counsel for the petitioner submits that both the witnesses have been summoned being witnesses of the occurrence whereas they were not present at the place of occurrence. Their names were not mentioned in the complaint and they have been summoned just to fill up the lacuna/gap. The application has been allowed without mentioning any specific reason.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order and other documents available on the file

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including the application under Section 311 Cr.P.C. and reply thereof.

Admittedly, the case is at the stage of recording of evidence of complainant and both the witnesses, who have been sought to be summoned by moving an application under Section 311 Cr.P.C. on the ground that no prejudice is going to be caused to the accused as she will be given opportunity to cross-examine both the witnesses just to test their veracity and truthfulness.

Section 311 Cr.P.C. is relevant to resolving the controversy in hand and the same is reproduced as under: -

“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.”

Undisputedly as per provisions of Section 311 Cr.P.C., the Court can summon any person as witness at any stage of the trial, if the statement of that person is necessary to decide the controversy in dispute.

Section 311 Cr.P.C. consists of two parts. Part one provides discretionary power to the Court and the later imposes obligation on it in case the evidence of witness appears to be essential for just decision of the case. It is for the Court to see on the basis of material available on record that the evidence of such witness is essential for just decision of the case or

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not. It is obligatory for the Court to summon such witness. Discretion is provided to the Court which is to be exercised by keeping in view the facts and circumstances of the case.

It was held by Bombay High Court in case *Sunil Vassudev Pednekar Vs. Bicholim Urban Cooperative Bank Ltd., 2006 (3) RCR (Criminal) 713* that Magistrate has power to permit the examination of witnesses under Section 254 (2) Cr.P.C.

Similarly, in case *Dr. Chaithanya R. Menon Vs. State of Kerala and Ors., 2008 CriLJ 3392*, Kerala High Court has held that it is obligatory for the Magistrate to take all such evidence as may be produced in support of prosecution even in case the names of those witnesses are not mentioned in the list of witnesses.

Similarly, Bombay High Court in case *Raosaheb s/o Namdeo Aher and anr. Vs. Bebitai w/o Pandit Sonawane and anr. 2009(3) AIR Bom. R 319* has held that the Court can exercise the power under Section 311 Cr.P.C. to enable it to arrive at the truth irrespective of the fact that prosecution or defence has failed to produce some evidence, which is necessary for a just and proper disposal of the case.

Same view has been held by Hon'ble the Supreme Court in case *Rajaram Prasad Yadav Vs. State of Bihar and another, 2013(3) RCR (Criminal) 726*, which is reproduced as under:-

“14. A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision

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shows that the expression “any” has been used as a prefix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such reexamination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of reexamination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any

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person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and reexamined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is needless to state that exercise of such power should be made judicially and also with extreme care and caution.”

In ***Rajaram Prasad Yadav***’s case (supra), it was also held that power under Section 311 Cr.P.C. can be invoked by the Court to meet out the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection and by keeping in view the interest of the accused, the victim and society and the grant of fair and proper opportunities to the persons must be ensured being a constitutional goal as well as a human right. The following principles have been laid down in para No.23 of said judgment, which are reproduced as under: -

- “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.*

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- 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*

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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 the present case, the application has been moved on the ground that both the witnesses sought to be summoned are material witnesses and they are necessary to be examined. Although the application moved by the prosecution has been opposed on the ground that the same has been filed just to fill up the lacuna in the prosecution version.

It is satisfaction of the trial Court to see as to whether it is

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essential to summon any witness for arriving at a just decision or not. It has been held in various judgments of this Court as well as of Hon'ble the Apex Court that the trial Judge is the best judge to decide the relevancy of the questions put by the defence counsel during cross-examination of a witness. The purpose and object of Section 311 Cr.P.C. is to impose a duty on the Court to discover the truth to reach to a just decision. Accordingly, the power under Section 311 Cr.P.C. is to be exercised in order to meet the ends of justice but for valid reasons with care and caution.

The object of the Court is to discover truth. Section 311 of the Code is one of such provisions of the Code which strengthens the arms of a Court in making efforts to get the truth by procedure sanctioned by law. It empowers the Court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or to examine any person in attendance, though not summoned as witness or recall and reexamine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or reexamine any such person in case his evidence appears to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The Court is to form an opinion that for the just decision of the case recalling or re- examination of the witness is necessary.

In view of the facts and law position discussed above, this Court is of the opinion that a detailed reasoned order has been passed by the trial Court while allowing the application under Section 311 Cr.P.C. moved by the prosecution. The evidence of said two witnesses is necessary and essential for the proper disposal of the case.

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Accordingly, impugned order dated 03.11.2018 requires no interference and the present petition, being devoid of any merit, is hereby dismissed.

20.12.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes