

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2931-2019

DATE OF DECISION: JANUARY 23, 2019

ROHIT SOOD

...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. B.K. MISHRNA , ADVOCATE FOR THE PETITIONER.

MANOJ BAJAJ, J.(ORAL)

This petition has been filed under Section 482 Cr.P.C. for quashing the order dated 16.02.2017 passed by learned Judicial Magistrate, Gurugram, whereby the application filed by the accused (petitioner) under Section 311 Cr.P.C. for recalling the complainant for further cross-examination was dismissed and the order dated 14.8.2018, passed by the Addl.Sessions Judge, Gurugram whereby the order passed by the trial Court dated 16.02.2017 was upheld. The impugned orders have arisen from a complaint case.

Learned counsel for the petitioner contends that the cross-examination of PW4 Rajesh Jain could not be conducted earlier in relation to the compromise and prayed for recalling the said witness once again. The said compromise was allegedly arrived at between the parties during the proceedings of case FIR No.106 of 10.05.2012 under Sections 406, 420, 467, 468, 471, 120-B IPC, registered at P.S. DLF Phase II, Gurgaon. However, the said compromise did not materialize. It needs to be noticed

that Rajesh Jain was examined as PW4 on 7.11.2015 and the matter was posted for 19.2.2016 for cross-examination. On the said day, cross-examination of the complainant-PW4 continued and was further deferred for remaining cross-examination after lunch break. As per the record, the cross-examination runs into more than 10 pages. The alleged compromise dated 11.9.2012 related to the FIR was never acted upon by the parties, resulting into commencement of trial. Once the prosecution has adduced its evidence in support of the charges against the accused, the element of compromise, that too partial, as per the petitioner, may not have any significance. Even otherwise, after the closure of the prosecution evidence, the accused did not appear and delayed further proceedings and this application has been filed when the case is fixed for defence evidence.

At this stage, it is necessary to reproduce Section 311 IPC:-

“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 its 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.”

This provision in the Cr.P.C. to recall/re-examine the witness is intended to facilitate the Court to find out truth. The power is discretionary

in nature and cannot be resorted to unless the Court is of the opinion that the said witness is necessary for proper adjudication of the case. There has to be compelling reasons for the Court to exercise the power to enable it to reach the truth. Such a power cannot be exercised in a routine or mechanical manner. In the case in hand, the compromise dated 11.9.2012, was not acted upon and did not materialize, so that may not have any bearing on the merits of the prosecution case.

In **Zahira Habibullah Sheikh and Anr. vs. State of Gujarat and Others, 2006(2) RCR(Criminal) 448**, it was observed as under:-

“The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is “at any stage of inquiry or trial or other proceeding

under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

In view of the above, this Court finds that the impugned orders passed by the Courts below do not suffer from any illegality, warranting interference by this Court under Section 482 Cr.P.C.

The petition is dismissed.

January 23, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No