

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-516-2019 (O&M)
Date of decision: 08.03.2019

Om Parkash

....Petitioner

Versus

Pritam Lal and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vikas Lochab, Advocate
for the petitioner.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting aside the order dated 01.12.2018 passed by the lower appellate Court, vide which application filed by the petitioner under Section 311 Cr.P.C. was dismissed.

Brief facts of the case are that the petitioner has filed a complaint under Sections 323, 467, 468, 420, 452, 506, 34 of the Indian Penal Code (for short 'IPC') and the respondents, after facing the full length trial, were acquitted by the trial Court vide judgment dated 07.03.2017. Thereafter, the petitioner filed an appeal before the lower appellate Court and during pendency of the said appeal, an application under Section 311 Cr.P.C. was filed for re-examination of witness namely Faruq and now the petitioner has come to know that said Faruq is residing in Faridabad and

therefore, he has moved this application for recalling the said witness. The application was contested by the respondents on the ground that it is not mentioned how this witness is relevant in the case and on 10.12.2016, the petitioner-complainant himself has given up this witness before the trial Court without giving any reason and therefore, the application before the lower appellate Court is not maintainable. The lower appellate Court, vide impugned order dated 01.12.2018, has dismissed the application, by passing the following order: -

“I have heard learned counsel for the applicant-complainant as well as learned counsel for the respondents and have gone through the documents available on the file.

As per averment in the application, appellant-complainant was to summon/examine the witness Faruq son of Ramjan, resident of village Badkhal, Faridabad and said application for summoning the witness was duly allowed by the trial court and complainant deposited the diet money of the witness namely Faruq. It was further averred that presence of the witness could not be secured despite many opportunities, since whereabouts of the above said witness was not known to the complainant, previous counsel for complainant given up the above said witness and his statement was recorded before the lower court. Later on, complainant came to know that said witness Faruq staying in Jamai Colony, Faridabad, Gurgaon Mod, Badkhal, Fariabad and prayed that said witness is very

much imperative for just adjudication of the case.

Section 311 Cr.P.C. is a very important provision of law relating to procedure in a criminal trial. It reads as follows :-

"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."

Admittedly, during trial, the said witness Faruk was given up by the complainant on 10.12.2016 at the lower Court and the respondents-accused Pritma Lal and Attar Chand Bhatia were acquitted from the court of Ms. Sushma, learned JMIC, Faridabad, vide Judgment dated 07.03.2017. Now at the appellate stage, the complainant has filed this application under 311 Cr.P.C. on 07.09.2018 and it would amount to de-novo trial. In view of above said discussion, the present application is devoid of merit and the same is hereby by dismissed."

The petitioner has filed the present revision petition challenging the aforesaid order.

Learned counsel for the petitioner submits that the said witness namely Faruq is a relevant witness and on account of his non-examination,

the trial Court has acquitted the respondents-accused.

On a Court query, learned counsel for the petitioner could not give any satisfactory reply how this witness is relevant and why this witness was given up before the trial Court.

I have heard learned counsel for the petitioner and perused the case file.

It is worth noticing here that said witness was allowed even by the trial Court, on moving an application under Section 311 Cr.P.C., which shows that the petitioner never relied upon the statement of this witness Faruq, at the first instance, as nothing has come on record that this witness was cited as a witness in the original complaint filed by the petitioner as the list of witnesses has not been attached with the present complaint.

Even otherwise, once this witness was given up before the trial Court, after he was allowed to be summoned, while allowing an application under Section 311 Cr.P.C., I find no justification to allow a similar application before the lower appellate Court, especially when the respondents-accused stand acquitted. Therefore, finding no illegality in the order dated 01.12.2018 passed by the lower appellate Court, present revision petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

08.03.2019
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No