

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

**CRM-M No.15758 of 2018
Date of decision: 04.04.2019**

Mehmood Ali

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. S.K. Singla, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 22.03.2018 vide which the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.'), in FIR No.102 dated 30.07.2014 registered under Sections 457, 380, 381, 411 of the Indian Penal Code (in short 'IPC') at Police Station Amargarh, was dismissed.

Brief facts of the case are that the petitioner is the complainant in the aforesaid FIR, in which, the allegations are that on 25/26.07.2014, the accused persons have committed theft of 10 tons of kamania of the iron and they are facing the trial. The trial Court after framing of the charge under Sections 457, 380, 381 and 411 IPC, recorded the statement of the petitioner/complainant as PW2 on 26.07.2017.

Counsel for the petitioner has submitted that on

26.07.2017, further examination-in-chief of the petitioner was deferred for want of original bill as it is noticed in his statement (Annexure P2). Thereafter, when the petitioner again appeared instead of completing his examination-in-chief, the trial Court recorded his cross-examination and, therefore, his examination-in-chief was never completed.

Counsel for the petitioner moved an application under Section 311 Cr.P.C., stating that inadvertently on 13.11.2017 when the petitioner again appeared as PW2, his examination-in-chief was not concluded rather his cross-examination was recorded, therefore, he may be granted opportunity to conclude his examination-in-chief.

The application was contested by the respondent/accused Balvir Singh. The trial Court vide impugned order dated 22.03.2018, dismissed the application by passing the following order :-

“5. After considering the rival contentions of both the sides this Court is of the considered view that the prosecution has moved the present application to recall the complainant, on the ground that examination-in-chief of PW2 was not completed and he was cross-examined, without completion of examination-in-chief, therefore, the opportunity for further examination-in-chief the witness namely Mehmood Ali may kindly be granted. This Court is of the view that although, Court can allow production of document and recall of witness on the later stage, however, at the same time, it is the duty of the Court to safeguard the interest of accused persons.

6. This Court is of the view that the prosecution was under obligation to complete the examination-in-chief of PW2 before starting of cross-examination. Since the cross-examination started straightway therefore, the examination-in-chief was deemed to be completed on

11.01.2015. Moreover, the purpose for which the witness is required to recall has already been fulfilled as the bills has already been exhibited as Ex.PW2/A and Ex.PW2/B. Therefore, the prosecution should not be allowed to fill up the lacuna in the case of prosecution. This Court is of further view that prosecution can not give benefit of its own fault/wrong. On the contrary, the prosecution is duty bound to prove the guilt of the accused on the basis of evidence available on the file. Moreover, the present application is filed at very belated stage of the case as the examination-in-chief was deferred on 11.01.2015, whereas, the present application has ben filed on 17.03.2018 i.e. after the lapse of 3 years and at the stage of DWs and for arguments. Therefore, this Court does not deem it appropriate to allow the application to recall the PWs for his further examination-in-chief, the application stand dismissed.

7. However, observation made hereinabove shall not affect the merits of the case in any manner."

Counsel for the petitioner has, thus, submitted that a bare perusal of the statement of the petitioner recorded in para on 26.07.2017 show that his examination-in-chief was deferred for want of production of the original bills and, therefore, he has rightly moved the application for appearing as a witness again. It is further submitted that no prejudice will be caused to the respondent as in case, his prayer is allowed, the accused will have a right to again cross-examine the petitioner on that point.

In reply, counsel for the respondent/accused has opposed the prayer on the ground that the bills which the petitioner wanted to produce on record are already on record as Ex.PW2/A and Ex.PW2/B,

which were produced during the cross-examination of the petitioner and therefore, the trial Court has rightly dismissed the application.

After hearing the counsel for the parties, I find merit in the present petition. It is held by the Hon'ble Supreme Court in **Criminal Appeal No.48 of 2019 (arising out of SLP (Crl.) No.1120 of 2017) titled as “Brig. Sukhjeet Singh (Retd.) MVC vs The State of Uttar Pradesh and others” decided on 24.01.2019**, that the powers under Section 391 Cr.P.C., be exercised judiciously and to secure the ends of justice. It is further held that the ultimate object of judicial administration is to secure the ends of justice and the Court exists for rendering justice to the people. In this case, the Hon'ble Supreme Court while dealing with the powers of the Court under Section 391 Cr.P.C., before the Appellate Court, the powers should be exercised to secure the ends of justice. The provisions of Section 311 Cr.P.C., are identical to the provisions under Section 391 Cr.P.C. and rather the broader powers are available with the trial Court as compared to the power of the Appellate Court.

Admittedly, the examination-in-chief of the petitioner was deferred on 26.07.2017 and this fact is not disputed by counsel for the respondent that on the next day i.e. 13.11.2017, his cross-examination started without completing the examination-in-chief, therefore, I find that the petitioner be granted one effective opportunity to conclude his examination-in-chief.

Ordered accordingly.

The trial Court will grant one effective opportunity to the petitioner to conclude his examination-in-chief and then grant one

effective opportunity to the respondent as well to cross-examine the petitioner on that subject.

It is made clear that further examination-in-chief of the petitioner will be limited to the extent of production of the original bill and no further facts will be permitted to be stated in his examination-in-chief, which may amount to filling up of any lacuna. The right to cross-examine will also be limited only to that extent.

In view of the above, this petition is allowed subject to payment of costs of Rs.10,000/- to be paid to the respondent/accused before recording the statement of the petitioner as PW2.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

04.04.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No