

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

CRM No.M-222 of 2017 (O&M)

Date of Decision: July 17, 2019

Kuljinder Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajiv Joshi, Advocate
for the petitioner.

Mr.Prabhjot Singh Walia, AAG, Punjab
for the respondent-State.

None for respondent No.2.

INDERJIT SINGH, J.

Petitioner Kuljinder Singh has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Kuldeep Kaur for quashing of judgment dated 17.12.2016 passed by learned Addl. Sessions Judge, Jalandhar, whereby, the revision filed by attorney of respondent No.2, challenging the order of trial Court dismissing the application under Section 311 Cr.P.C., was allowed..

Notice of motion was issued. Learned State counsel for the respondent appeared and contested the petition. However, none has put in appearance on behalf of respondent No.2 despite service.

From the record, I find that an application under Section 311

Cr.P.C. was filed by the prosecution, which was dismissed by learned JMIC,

Jalandhar, vide order dated 12.08.2016. Then, a revision was filed before Court of Session and learned Addl. Sessions Judge, Jalandhar, vide impugned judgment dated 17.12.2016, accepted the revision.

Learned counsel for the petitioner argued that order passed on the application under Section 311 Cr.P.C. is an interlocutory order and no revision is maintainable before the Court of Session. He further argued that only quashing petition under Section 482 Cr.P.C. is maintainable before this Court. Therefore, he contended that only on this ground, the impugned judgment passed by learned Addl. Sessions Judge, Jalandhar, is liable to be set aside. Learned counsel for the petitioner also argued that learned trial Court has considered the fact that sufficient opportunities were granted but the prosecution failed to complete its evidence and evidence was closed by Court order, therefore, without challenging that order, accepting of application under Section 311 Cr.P.C./allowing the witnesses to be examined will amount to reviewing its own order, which is not permissible under law.

On the other hand, learned State counsel argued that evidence is necessary for just decision of the case and impugned judgment has been rightly passed.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

From the perusal of the record, I find that order passed on the application under Section 311 Cr.P.C. is an interlocutory order and no revision is maintainable against the interlocutory order as per law. Therefore, filing of revision before Court of Session and passing any order

in the revision, is not as per law and the same is liable to be set aside.

As regarding second argument, I find that learned Magistrate has no power to recall or review its own order. Further, any party, if aggrieved from the order under Section 311 Cr.P.C., that party should approach this Court under Section 482 Cr.P.C. for availing remedy.

In my view, the argument of learned counsel for the petitioner has also merit that without challenging the order of learned trial Court vide which the evidence has been closed, the witnesses cannot be allowed to be examined under Section 311 Cr.P.C.

In view of the above discussion, I find that impugned judgment dated 17.12.2016 passed by learned Addl. Sessions Judge, Jalandhar, is illegal and not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed.

July 17, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No