

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-28555-2016

Date of decision: 13.03.2019

Mohan Lal Taneja and others

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. AK Lamdharia, Advocate for the petitioners.

Mr. Harpreet Multani, AAG, Punjab.

Mr. SPS Sidhu, Advocate for the complainant.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., prayer has been made for quashing order dated 11.07.2016 (Annexure P-4), impugned herein whereby application of the prosecution under Section 311 Cr.P.C., for summoning four additional witnesses was allowed by the trial Court.

Learned counsel for the petitioners *inter alia* contends that the trial Court failed to appreciate that statements of additional witnesses sought to be examined by the prosecution by moving application under Section 311 Cr.P.C., were not recorded during investigation, by the Investigating Officer and were also not made part of the challan. For the first time, the petitioners were taken to surprise by the prosecution by moving application under Section 311 Cr.P.C., seeking summoning of

four witnesses in additional evidence. The trial Court illegally accepted the version of the prosecution without passing any speaking order, ignoring the fact that even in the FIR, the complainant did not name those witnesses. The statements of those four witnesses, who have now been permitted to be examined in prosecution evidence were recorded by the Deputy Superintendent of Police, Guruhar Sahai, in a different enquiry. Therefore, those persons could not have been examined as prosecution witnesses. In support of his contentions, learned counsel has relied upon a judgment of the Apex Court dated 04.07.2013, passed in **SLP (Criminal) No. 2400 of 2011, Rajaram Prasad Yadav Vs. State of Bihar and another**.

On the other hand, learned State counsel assisted by learned counsel counsel for the complainant vehemently refuting the submissions of learned counsel for the petitioners and pleading the legality and validity of impugned order, submitted that the statements of four persons, who have been ordered to be summoned as additional witnesses were recorded by DSP, while conducting enquiry upon application of the petitioners bearing No. 2104 dated 19.05.2014, much prior to filing of final report under Section 173(2) Cr.P.C. The statements of those witnesses were very material to prove guilt of the petitioners. Therefore, they have rightly been summoned as additional witnesses by the trial Court.

After giving thoughtful consideration to the rival submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow:-

For ready reference, Section 311 Cr.P.C. is reproduced hereunder:-

“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.”

From the plain language of above section, it is evident that to impart justice, any person can be called by the Court at any stage. Undisputedly, statements of four witnesses under Section 161 Cr.P.C. were recorded by the Deputy Superintendent of Police, on the aforementioned application of the petitioners. Therefore, in case, the investigating officer at the time of filing of final report under Section 173 (2) Cr.P.C., inadvertently, omitted to make the same as its part or mentioning their names in the list of witnesses, the same can only be termed as clerical mistake.

A human being has lost his precious life by committing suicide, levelling allegations against the petitioners in his suicide note. Therefore, the matter, being quite serious in nature cannot be taken lightly.

The paramount consideration of the Courts should always be

to impart justice. Therefore, in case, the prosecution has been permitted to examine four witnesses, the same is not going to prejudice the right of the petitioners, inasmuch as, they would get opportunity to cross-examine and rebut their testimony by leading evidence in defence.

The facts and circumstances of the judgment relied upon by learned counsel for the petitioners are quite distinguishable from the facts of present case. Therefore, no benefit of the same, whatsoever, can be given to the petitioners.

Dismissed.

March 13, 2019
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(RAMENDRA JAIN)
JUDGE

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