

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

CRM No.M-36909 of 2015 (O&M)

Date of Decision: March 18, 2019

Parvinder Kaur

...Petitioner

VERSUS

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Dharam Bir Bhargav, Advocate for
Mr.R.K.Handa, Advocate
for the petitioner.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.N.S.Gill and Mr.Armaan Gagneja, Advocates for
Mr.Munish Gupta, Advocate
for respondent No.3.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against State of Punjab and other respondents, for quashing of impugned order dated 14.10.2015 passed by learned Chief Judicial Magistrate, Hoshiarpur, vide which the application filed by the petitioner under Section 311 Cr.P.C. for summoning Samanpreet Kaur as a witness was dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 and 3 appeared and contested the petition.

State counsel and have gone through the record.

The perusal of the record shows that challan was presented against Paramjit Singh, Kulwant Kaur and Rajwant Kaur in case FIR No.40 dated 03.03.2009 under Sections 326, 452, 323 and 34 IPC by the police of Police Station Model Town, Hoshiarpur. During the pendency of the trial, an application was filed by the complainant-petitioner through learned APP under Section 311 Cr.P.C., copy of which is Annexure P-1. It is stated in the application that statement was recorded by the police under Section 161 Cr.P.C. of the complainant namely Parvinder Kaur and it has been stated that at the time of incident on 28.02.2009, children of complainant were present in the house namely Samanpreet Kaur, daughter and Karanpreet Singh, son. It is also stated by the complainant that on receipt of telephonic call, Pawan Bansal, father of complainant, also reached there and after arranging the vehicle, complainant was taken to Civil Hospital, Hoshiarpur and got admitted there. Even in the statement suffered by the complainant in the Court during prosecution evidence, she has stated on the same lines and complainant wants to examine her daughter, who is 13 years of age at present, as a witness. Reply was filed contesting the application.

Learned CJM, Hoshiarpur, vide impugned order dated 14.10.2015, dismissed the application by holding that at the time occurrence, the age of proposed witness might be seven years and since then, she is residing with the complainant. She has not been cited as a witness. The charges were framed on 25.10.2010 and even then, no such application was moved to show Samanpreet Kaur as witness. It is also held in the order that all the material witnesses have already been examined and

dismissed. Aggrieved from the above-said order, present petition has been filed.

First of all, I find that the application under Section 311 Cr.P.C. can be filed at any stage. Even if the material witnesses have been examined by the prosecution, even then, there is no bar to file application. It is specifically written in the provisions under Section 311 Cr.P.C. that any Court may at any stage of inquiry, trial or other proceeding, can summon any person as a witness etc., which means that application can be filed at any stage and it is no ground to dismiss the application. Secondly, for deciding the application under Section 311 Cr.P.C., the Court is only to see whether the evidence, so required to be produced, is essential for the just decision of the case or not. In the present case, Samanpreet Kaur is stated to be eye witness and if her name has not been mentioned by the Investigating Officer or her statement has not been recorded under Section 161 Cr.P.C., even then, she being an eye witness, can be examined in the Court. This is no ground that earlier, application was not filed.

The perusal of the impugned order itself shows that evidence of the prosecution was going on when the application was filed under Section 311 Cr.P.C. As already discussed, as Samanpreet Kaur is eye witness, therefore, her statement is necessary for the just decision of the case. Furthermore, no prejudice is going to be caused to the opposite party because they will get the opportunity to cross-examine the witness. Mere fact that witness is a child witness, also has no effect on the case. In no way, it can be held that application under Section 311 Cr.P.C., has been filed with malafide intention to fill up the lacuna.

In view of the above discussion, I find that the impugned order

dated 14.10.2015 passed by learned CJM, Hoshiarpur, is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed. Learned trial Court is directed to give two effective opportunities to the prosecution for examining the proposed witness.

March 18, 2019
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No