

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

**CRR No. 2553 of 2016**

**Date of decision : 06.03.2019**

**Paramjit Kaur Thandi**

.....Petitioner

*Versus*

**State of Punjab and others**

...Respondent

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present : Mr. P. S. Ahluwalia, Advocate for the petitioner.

Mr. Amit Mehta, Senior DAG, Punjab.

Mr. Arun Takhi, Advocate for respondents No.2 and 3.

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**DAYA CHAUDHARY, J.**

Initially the petitioner filed CRM-M No.10280 of 2016 under Section 482 of the Code of Criminal Procedure, 1973 (for short – 'Cr.P.C.') for quashing of impugned order dated 19.02.2016 (Annexure P-7) passed by learned Additional Sessions Judge, Hoshiarpur, whereby the application moved by the petitioner/complainant under Section 311 Cr.P.C. was dismissed. Subsequently, by relying upon judgment in case ***CRM-M No.15173 of 2012*** titled as ***Uppal Credit and Investment Pvt. Ltd. Vs. Ashwani Kumar***, said petition was converted into criminal revision as the impugned order was revisable.

Briefly, the facts of the case as made out in the present petition are that the petitioner/complainant got registered an FIR No.16 dated 02.03.2015 at Police Station – Mehtiana, Distt. Hoshiarpur for offences

punishable under Sections 302, 201, 420, 404, 120-B of the Indian Penal Code, 1860 (for short – 'IPC') against her sister-in-law (*Jethani*) namely Kuljinder Kaur for having committed murder of her brother-in-law (*Jeth*) namely Raj Pal Singh. Said FIR was registered by alleging that accused Kuljinder Kaur, wife of the deceased, and her paramour Satinder Singh alias Vipran (respondent No.2) as well as her father Amrik Singh (respondent No.3) committed murder of deceased Raj Pal Singh just to grab the property of the deceased. After registration of said FIR, the matter was investigated and final report under Section 173 Cr.P.C. was filed before the Court. Accused/respondents No.2 and 3 were facing trial. However, accused Kuljinder Kaur was evading the process of law and proclamation proceedings were initiated against her. During the trial, the petitioner/complainant filed an application under Section 311 Cr.P.C. before the trial Court to summon a witness as additional evidence and the same was dismissed vide order dated 19.02.2016, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the application moved by the petitioner has been dismissed without recording any finding and reasons that the statement of respondents/accused recorded during inquiry was inadmissible in evidence. It has further been observed that the inquiry cannot be made the basis for conviction and the same is not an evidence as the case is based on circumstantial evidence. Learned counsel also submits that the inquiry report was necessary for the just decision of the case. The examination of police official who conducted the inquiry was necessary to explain the delay in lodging the FIR but that fact was not taken

into consideration. Learned counsel also submits that the police did not register the FIR and delay had occurred because there was no progress in the investigation. The examination of said police official was necessary to complete the chain of events especially in a case based on circumstantial evidence. Learned counsel also submits that the respondents are not going to be affected in any manner and no prejudice is going to be caused to anyone. At the end, learned counsel submits that the object of Section 311 Cr.P.C. is to enable the Court to find out the truth and render just decision of the case. Learned counsel for the petitioner has relied upon judgments of Hon'ble the Apex Court in cases ***Rajaram Prasad Yadav Vs. State of Bihar and another 2013 (3) R.C.R. (Criminal) 726*** and ***Vijender Vs. State of Delhi 1997 (2) R.C.R. (Criminal) 256***, in support of his arguments.

Learned State counsel submits that the inquiry has no bearing upon the merits of the case as by going through the contents of the application, no specific prayer was made that the examination of the witness was necessary so as to explain the delay. Learned State counsel also submits that the examination of the witness is not necessary being not admissible in evidence. A specific finding has been given that it would be a futile exercise to summon the police official to get his statement recorded. Any statement recorded in the inquiry is not a judgment in terms of the provisions of the Indian Evidence Act, 1872 (for short - 'Evidence Act') and the same cannot be made the basis for conviction.

Learned counsel for respondents No.2 and 3 has also reiterated the arguments raised by learned State counsel. He also submits that while filing the application under Section 311 Cr.P.C., a specific ground was to be

taken as to how the recording of statement of the police official was necessary for just decision of the case. The arguments raised by learned counsel for the petitioner is contrary to the contents of the application as it has been argued that there is delay in lodging of the FIR and the same is to be explained as much time was taken by the police official in conducting the inquiry.

Heard arguments of learned counsel for the parties and I have also perused the impugned order dated 19.02.2016.

Facts relating to filing of application under Section 311 Cr.P.C. by the petitioner and dismissal thereof vide order dated 19.02.2016 are not disputed. The provisions of Section 311 Cr.P.C. are relevant for deciding the present controversy, which is reproduced as under:-

***“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.”*

The purpose and object of Section 311 Cr.P.C. imposes a duty on the Court to determine the truth and to render a just decision. Accordingly, the power under Section 311 Cr.P.C. is to be exercised in order to meet the ends of justice for valid reasons but with care and caution. Hon’ble the Apex Court in ***Rajaram Prasad Yadav’s*** case (supra) has laid down the following principles which are to be borne in mind while dealing

with an application under Section 311 Cr.P.C. :-

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?
- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.
- h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear

in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

- k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.
- n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

The object of the Court is to discover truth. Section 311 Cr.P.C. is one of such provisions of the Code which strengthens the arms of a Court in making efforts to get the truth by procedure sanctioned by law. It empowers the Court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or to examine any

person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. The Court is to form an opinion that for the just decision of the case recalling or re-examination of the witness is necessary.

The exercise of this power is to be guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. The purpose is not to fill up the lacuna. Whether recalling of a witness is for filling up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. It is for the Court to consider all the circumstances and decide as to whether the prayer for recall is genuine or not.

In the present case, the application under Section 311 Cr.P.C. has been moved to bring additional evidence on record on the ground that murder of Raj Pal Singh was committed by his wife along with her paramour and her father. Earlier a complaint was moved to the SSP which was registered on 20.01.2015. It was investigated by Inspector S.S. Bal Incharge of Economic Offences Wing, Hoshiarpur and submitted his report to the SSP on 04.03.2015. In that inquiry, statements of accused Amrik Singh, his son Gurinder Singh as well as statement of Satinder Singh alias Vipran were recorded. Meanwhile, the FIR was registered on the statement of Paramjit Kaur (petitioner) against the accused persons. The application under Section 311 Cr.P.C. was moved on the ground that the report

submitted by the Inquiry Officer was duly approved by DSP as well as SSP and it was ordered to be placed on the police file, but it could not be placed on the judicial file and it was not part of the challan. The prayer has been made in the application that the inquiry report is necessary to be brought on record for just decision of the case and Inspector S.S. Bal Incharge of Economic Offences Wing is necessary to be examined along with his report.

Notice in the application was issued and reply of the application was filed. In the reply it has been mentioned that the inquiry report does not have any bearing upon the case as the trial is to be conducted and matter is to be decided on the basis of evidence recorded in the Court. It has also been mentioned in the reply that at the most the inquiry report can be used for confronting and contradicting the witnesses in accordance with provisions of Section 145 of the Evidence Act. By considering the contents of the application as well as the reply and also the arguments raised by learned counsel for the parties, the same was dismissed vide impugned order dated 19.02.2016 by holding that statement of the witness who was sought to be summoned, cannot be used for just decision of the case being not admissible in evidence. It was also held that any statement written in the inquiry is not a judgment in terms of provisions of Evidence Act and it cannot be made basis for conviction and sentence of the accused.

An argument has been raised by learned counsel for the petitioner that there was a delay in lodging of the FIR, which is required to be explained by way of leading an additional evidence as the inquiry was conducted and report was submitted. However, on perusal of application

moved by the petitioner, it reveals that simply it has been mentioned that the inquiry report along with statements are necessary to be produced on record for just decision of the case. Neither it has been mentioned in the application that the inquiry report is necessary for explaining the delay nor any such prayer has been made. There is no such averment even in the petition that the statement of Inquiry Officer is necessary to explain the delay.

No doubt Section 311 Cr.P.C. is wholly discretionary and this power is to be exercised by the Court when it appears that the evidence is necessary/essential for just decision of the case. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the court. Sections 60, 64 and 91 of the Evidence Act are based on this rule. The Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. It is to be left to the parties. It is for the Court to decide as to whether the evidence of said witnesses is necessary for the just decision or not.

Hon'ble the Apex Court in case ***Natasha Singh Vs. CBI (State) 2013(3) R.C.R. (Criminal) 368*** has discussed the scope and object of provisions of Section 311 Cr.P.C. by holding as to how the provisions of Section 311 Cr.P.C. are to be invoked with great care and caution. Relevant paras of the judgment are reproduced as under :-

*14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously*

*and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party.*

*The power conferred under Section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.*

*The very use of words such as ‘any Court’, ‘at any stage”, or ‘or any enquiry, trial or other proceedings’, ‘any person’ and ‘any such person’ clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the Court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case.*

15. *Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person’s right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules*

*of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. (Vide: Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr., AIR 1958 SC 376; Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors., AIR 2004 SC 3114; Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors., AIR 2006 SC 1367; Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.), (2007) 2 SCC 258; Vijay Kumar v. State of U.P. & Anr., (2011) 8 SCC 136; and Sudevanand v. State through C.B.I., (2012) 3 SCC 387).*

In the present case, while dismissing the application, reasons have been recorded by the trial Court and as such, it cannot be said that the impugned order is not well reasoned or non-speaking. Moreover, the application moved by the petitioner does not say as to how the examination of the police official is necessary for the just decision of the case. As far as the explanation of delay is concerned as has been argued by learned counsel for the petitioner, the same does not find mention in the application. The arguments have been raised beyond the contents of the application and as such by taking into consideration the settled law as has been held in various judgments especially as mentioned above, no interference is required in the impugned order and as such the present petition being devoid of any merit is dismissed.

**06.03.2019**

*sunil yadav*

**( DAYA CHAUDHARY )  
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No