

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Revision No.3383 of 2016

.....

Date of decision:04.02.2019

Ankit and others

...Petitioners

v.

State of Haryana

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Preetinder Singh Ahluwalia, Advocate for the petitioners.

Mr. Tanuj Sharma, Assistant Advocate General, Haryana
for the respondent-State.

Mr. Jitender Nara, Advocate for the complainant.

.....

Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 8.9.2016 passed by learned Additional Sessions Judge, Jhajjar, whereby application under Section 311 Cr.P.C. filed by the prosecution has been allowed and PW Manjeet alias Shahtir has been summoned to be examined as prosecution witness.

Notice of motion was issued in this case.

Mr. Tanuj Sharma, learned Assistant Advocate General, Haryana has appeared on behalf of the respondent-State and Mr. Jitender Nara, learned Advocate has appeared for the complainant and contested this criminal revision petition.

[2]

I have heard learned counsel for the parties and learned State counsel and have gone through the record.

A perusal of the record shows that during the pendency of the trial, an application under Section 311 Cr.P.C was moved by the prosecution. It has been stated in the application that the above stated case was got registered by applicant Narender. In FIR and other documents, name of Manjeet PW categorically figured as a PW of last seen of deceased and PWs etc. but the investigating agency did not cite him as PW perhaps inadvertently. It has also been stated that the evidence of PW Manjeet is very essential for just decision of the case. Therefore, it has been prayed that Manjeet son of Ramphal Singh resident of Village Dighal may kindly be summoned and permitted to examine him as PW under Section 311 Cr.P.C.

In the reply to application before the trial Court, the accused stated that the name of Manjeet is no where mentioned in the first complaint i.e. DD No.14 dated 1.9.2012 regarding missing of deceased Devender by PW Narender and even in the statement of Narender recorded on 3.9.2012. There is only mentioned that some Manjeet without any description or other details such as parentage and address etc. It has also been stated in the reply that when Narender was examined in the Court, then he had only mentioned the name of some Manjeet and no other description was given by him in that statement also.

The learned Additional Sessions Judge, Jhajjar, vide order dated 8.9.2016 allowed this application and PW Manjeet alias Shahtir has been allowed to be examined as prosecution witness. Aggrieved from this

order, the present criminal revision petition has been filed.

It is admitted fact between the parties that in the complaint i.e. DD. No.14 name of Manjeet was not mentioned. In the statement of Narender, there is only mention regarding some Manjeet, but his parentage and address has not been mentioned. It is also admitted fact between the parties that no statement of Manjeet was recorded under Section 161 Cr.P.C. Even this fact is also admitted that when Narender was examined as PW.15, even then he has mentioned some name of Manjeet, but has not given parentage and address of that Manjeet. The Court below held that from the perusal of the statement of PW-Narender, names of Vijay, Pardeep, Jogender and Manjeet alias Shahtir have been mentioned.

Learned counsel for the petitioner has brought it to my notice that the application has been filed by the Public Prosecutor in which it has been stated that in the FIR and other documents the name of Manjeet PW categorically figured as PW of last seen of deceased and PW etc. Even if it is taken that Manjeet was last seen in the company of deceased and any PW this will not prove anything. There is no mention that Manjeet has seen the deceased with the accused etc. Otherwise also, there is nothing in the application as to how this evidence is relevant and what this witness is to depose. Before accepting the application under Section 311 Cr.P.C., the Court is to see whether this evidence is necessary for the just decision of the case as there are no facts and no statement under Section 161 Cr.P.C. and no particulars of Manjeet have been mentioned in the FIR etc. Therefore, at this stage, in no way, it can be held that the evidence which Manjeet is to depose is necessary for the just decision of the case. Hence, the impugned

[4]

order passed by the learned Additional Sessions Judge, Jhajjar, is not as per law and the same is liable to be set aside. If this evidence is allowed, it will cause prejudice to the case of the accused.

Therefore, the application filed by the prosecution under Section 311 Cr.P.C. to summon Manjeet alias Shahtir as PW is having no merit and is dismissed.

Therefore, finding merit in this criminal revision petition, the same is allowed and the impugned order dated 8.9.2016 passed by the learned Additional Sessions Judge, Jhajjar, is set aside.

February 04, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No