

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1612-2018 (O&M)
Date of Decision : 12.04.2019

Sohan Lal

..... Petitioner

Versus

UT, Chandigarh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Varinder Chhibbar, Advocate
for the petitioner.

Mr. Parveen Chander, Advocate
for Mr. G.D.S.Wasu, Addl. Public Prosecutor
for the respondent-UT, Chandigarh.

RAJ SHEKHAR ATTRI, J. (Oral)

The petitioner has preferred the instant petition under Section 401 Cr.P.C. against the order dated 08.01.2018, passed by the learned Addl. Sessions Judge, Chandigarh, vide which the application under Section 311, moved by the petitioner for recalling the victim to lead evidence has been dismissed.

In this case, PW5 Mrs. Neeru, TGT, Hindi was summoned, who produced the record with regard to the admission of prosecutrix in school. The said statement reads as under:-

“I have brought the original record of admission of student Harpreet, D/o Sh. Lallan Parsad and Prabha Devi vide Admission No.10931 dated 06.4.2009 in 6th Class. As per the school record the date of birth of student Harpreet is 20.07.1999. The relevant attested copy of extract of admission and withdrawal registers brought by me today in the court are Ex.P10. Attested copy of application form and school leaving

certificate submitted at the time of admission of above named student are Ex.P11 & Ex.P12. Our school issued transferred certificate of the above named student which is Ex.P7. Ex.P7 bears signatures of Mrs. Ramnik Kaur Principal Government Sr. Sec. School Manimajra Town whose signatures I identify as I have seen her signing in official capacity. (original record seen and returned).

Xxxxxmn by accused

Nil (opportunity given). ”

It seems that no counsel was present on behalf of accused on that day, therefore, name of the counsel is not mentioned and opportunity to him was made nil.

The petitioner wanted to recall the said witness and as such, he moved an application under Section 311 Cr.P.C. and the said application was dismissed, as stated above.

While holding the criminal trial, a Judge has to take in mind *inter alia* the following factors:-

- (a) providing the fair trial;
- (b) the role of the Judge while holding a criminal trial

So far as providing a fair trial is concerned, to the mind of this Court, a fair trial is the heart of the criminal jurisprudence. It is well settled that denial of fair trial is crucifixion of human rights. Equally, this is an integral part of a democratic polity which is governed by rule of law. It is ingrained in the concept of due process of law. While emphasizing the principle of fair trial and the practice of the same in the course of trial, it is obligatory on the part of the Courts to see whether in an individual case or category of cases, because of non-compliance of a certain provision, reversion of judgment of conviction is inevitable or it is dependent on

arriving at an indubitable conclusion that substantial injustice has in fact occurred.

Hon'ble Supreme Court in **Zahira Habibullah Sheikh and another v. State of Gujarat and others**; 2006 (2) RCR (Criminal) 448 has held in para 25 and 26 as under : -

“25. In this context, reference may be made to [Section 311](#) of the Code which reads as follows:

"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 section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under [the Code](#) (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with

regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying [Section 311](#) of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under [the Code](#) and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In [Section 311](#) the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial

mind.”

Secondly, it is well settled that a Judge, while conducting a criminal trial, is not be a mook spectator. A criminal trial is nothing but an endeavour to search the truth. Therefore, a Judge has to intervene as and when required, especially to rule out illegalities, irregularities or infirmities in course of trial and also the inadmissible evidence.

Learned counsel for the petitioner has submitted that the age of the prosecutrix is a material fact which can be proved by corss examination. Therefore, the cross-examination of PW5 Mrs. Neeru is necessary in the interest of justice.

To the mind of this Court, the opportunity to conduct the cross-examination of said witness is a requisite part of fair trial and also is essential for just decision of the case.

Consequently, this court is of the view that the impugned order suffers from illigality, irregularity and infirmity and is not sustainable in the eyes of law.

Consequently, the instant petition stands allowed. The impugned order dated 08.01.2018 is set aside. The parties are directed to appear before the court below. The trial court shall summon the witness and afford an opportunity to the petitioner to cross-examine PW5 Mrs. Neeru.

12.04.2019
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(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No