

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

213

**CRM-M-1802-2020 (O&M)  
Decided on : 01.10.2020**

Neeru Rani

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

**PRESENT:** Mr. Dinesh Nagar, Advocate  
for the petitioner.

Mr. Amardeep S. Gill. Sr. DAG, Punjab.

Mr. Yogesh Goel, Advocate  
for respondent No.3.

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**MANJARI NEHRU KAUL, J. (Oral)**

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The instant petition has been filed under Section 482 Cr.P.C. to impugn the orders dated 06<sup>th</sup> December, 2019 and 20<sup>th</sup> December, 2019 (Anexures P-3 & P-4, respectively), vide which the trial Court at Ludhiana dismissed application under Section 311 Cr.P.C. stated to have been filed on 01<sup>st</sup> February, 2019 (Annexure P-1) by the petitioner (complainant) seeking her re-examination and thereafter closed the prosecution evidence by order.

It would be worthwhile to mention that at the time of issuance of notice of motion on 16<sup>th</sup> January, 2020, it was submitted by the learned counsel for the petitioner that the petitioner after being threatened by police officials to compromise the matter with the accused or else be ready to face dire consequences, had been compelled to turn hostile, subsequent to her examination-in-chief before the trial Court. It had been further submitted by the learned counsel for the petitioner that soon after the conclusion of her evidence, the

petitioner had mustered the courage to speak out the truth and precisely for this reason, she moved an application under Section 311 Cr.P.C. on 01<sup>st</sup> February, 2019 (Annexure P-1), wherein, she spelt out the circumstances, which had led her to turn hostile and thus prayed for her re-examination. It was also urged by the learned counsel that the application under Section 311 Cr.P.C. was decided on 06<sup>th</sup> December, 2019 (Annexure P-3) i.e. after nine months of the the application (Annexure P-1) having been moved and during the intervening period, remaining prosecution witnesses were examined and thereafter, evidence of the prosecution was ordered to be closed by the trial Court on 20<sup>th</sup> December, 2019. As the learned counsel for the petitioner *prima facie* made out a case and more so, after taking into account the delay in deciding the application under Section 311 Cr.P.C. by the trial Court, this Court while issuing notice of motion on 16<sup>th</sup> January, 2020, directed that the judgment by the trial Court would remain stayed.

The respondent-accused meanwhile approached this Court for grant of regular bail vide CRM-M-17908-2020, which was then ordered to be listed along with the instant petition vide order dated 04.08.2020. On entering appearance learned counsel appearing for the respondent-accused placed on record the zimni orders of the proceedings before the trial Court, which revealed an altogether different story and were, in fact, totally contrary to the submissions made by the learned counsel for the petitioner.

It was submitted by the learned counsel for the respondent that a perusal of the zimni orders so placed on record clearly reflected that in fact, there had been no delay by the trial Court in deciding the application filed on 02<sup>nd</sup> December, 2019, under Section 311 Cr.P.C. by the petitioner, as the same was decided within four days of its filing i.e. on 06<sup>th</sup> December,

2019. It was further argued that the aforementioned application was moved by the petitioner after nine months of the conclusion of her evidence and after that evidence had been closed by order by the trial Court, which made it abundantly clear that it had been moved with the sole objective to delay the conclusion of the trial.

Heard learned counsel for the parties and gone through the material on record.

On a perusal of the zimni orders, it transpires that the application under Section 311 Cr.P.C. was moved by the petitioner only on 02<sup>nd</sup> December, 2019 and not on 01<sup>st</sup> February, 2019, as had been pleaded by the learned counsel for the petitioner on the date when the notice of motion was issued. Further, a perusal of the zimni orders clearly reveals that the aforementioned application was decided by the trial Court without any delay on 06<sup>th</sup> December, 2019.

When confronted with the contradictions *qua* the dates pertaining to the filing of the application under Section 311 Cr.P.C. and its final disposal by the trial Court, learned counsel for the petitioner was unable to controvert the same and pleaded that he had made his submissions, as instructed by his client i.e. the petitioner. Rather, he conceded that the application under Section 311 Cr.P.C. was filed by the petitioner only on 02<sup>nd</sup> December, 2019, as rightly reflected in the zimni orders so filed by the learned counsel for the respondent.

No doubt, a lawyer makes his submissions on the basis of the instructions given to him by his client, however, the least which a counsel is required to do as an Officer of the Court, is to verify the authenticity of the documents provided to him by the client before attesting them to be true

copies. In the instant case, learned counsel for the petitioner duly attested the documents to be true copies. Hence, he cannot escape his liability by passing on the blame entirely on his client/petitioner. Learned counsel for the petitioner has expressed his profound apology for this lapse on his part, which he submits was unintentional. This Court expresses its strong displeasure over the conduct of the learned counsel for the petitioner, which on the face of it is unpardonable and reflects his lackadaisical and improper approach.

However, in view of the apology tendered by the learned counsel for the petitioner, this Court does not wish to proceed against him, however, the counsel is advised and warned to be more cautious and responsible in future.

Adverting to the merits of the case, no doubt, the powers of a Court under Section 311 Cr.P.C. are very wide, however, these powers should be exercised sparingly and with a great deal of circumspection. Since the underlying object of Section 311 Cr.P.C. is to arrive at a just decision of a case, hence, it becomes all the more imperative that the Court must take into account all the circumstances in their totality before deciding an application under Section 311 Cr.P.C.

In the case in hand, the evidence of the petitioner concluded on 21<sup>st</sup> December, 2018. A perusal of the zimni orders, placed on record by the learned counsel for the respondent reveals that not only was the petitioner duly represented by a counsel during the course of the hearings, but she remained present in the Court on a number of hearings as well, during the course of the trial. After her evidence had been concluded, the evidence of the remaining prosecution witnesses was recorded over a period of time

stretching almost 11 months. It does not appeal to reason as to what prevented the petitioner from apprising the Court or even her counsel about the alleged threat perception. The least that the petitioner could have done was to at least apprise her counsel, which admittedly she did not do. Her submission that she mustered courage soon after her evidence concluded on 21<sup>st</sup> December, 2018, to speak out the truth is belied from the material on record, as admittedly the application under Section 311 Cr.P.C. was filed only on 02<sup>nd</sup> December, 2019 i.e. after nine months of the conclusion of her evidence.

In the facts and circumstances as already detailed above, this Court does not find any cogent reason to interfere with the well reasoned orders dated 06<sup>th</sup> December, 2019 and 20<sup>th</sup> December, 2019 (Annexures P-3 & P-4, respectively), passed by the trial Court.

Accordingly, the instant petition stands dismissed. The stay granted by this Court vide order dated 16<sup>th</sup> January, 2020 stands vacated. The trial Court is directed to proceed with the trial and conclude the same expeditiously preferably within two months from the date when normal Court functioning resumes before the Courts below.

**(MANJARI NEHRU KAUL)**  
**JUDGE**

**October 01, 2020**

*J.Ram*

*Whether speaking/reasoned: Yes/No*  
*Whether Reportable: Yes/No*