

CRR-460-2020 (O&M)

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

**CRR-460-2020 (O&M).
Decided on: February 13, 2020.**

Dharminder Singh @ Mukesh Kumar

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Manish Kumar Singla, Advocate,
for the petitioner.**

JASGURPREET SINGH PURI, J. (ORAL)

The present revision petition has been filed assailing the order passed by the learned Judge, Special Court, Faridkot dated 17.1.2020 whereby the application under Section 311 Cr.P.C. filed by the prosecution was allowed and one prosecution witness namely Inspector Sanjeev Kumar was ordered to be served.

Learned counsel for the petitioner has submitted that in the present case, the learned trial Court has erred in law in allowing the application under Section 311 Cr.P.C. filed by the prosecution in view of

the fact that the said witness was already in the list of witnesses and vide order dated 16.8.2019, was given up by the State being unnecessary.

Order dated 10.08.2019, (Annexure P1), is reproduced as under:-

PW-1 SI Harpreet Kaur and PW-2 C. Gurpreet Singh are present and examined.

PW-3 ASI Sikander Singh is present and examined in chief. His cross-examination deferred on request of counsel for accused. He is bound down for 04.09.2019.

Ld. Addl. P.P. for the State has given up PW's ASI Chamkaur Singh, HC Gurmail Singh, HC Aman Kumar, C Gurpreet Singh, Ahlmad Raju Sharma and ASI Jaswinder Singh and Inspector Sanjiv Kumar being unnecessary.

Summons of PW MHC Bohar Singh received back duly served but he has sent a request, which is considered and allowed.

PW's mentioned at Sr. No.1 and 11 have failed to appear despite service. Let, they be summoned throughailable warrants in the sum of Rs.5,000/- each with one surety in the like amount.

PW mentioned at Sr. No.6 be also summoned for date fixed.”

Learned counsel for the petitioner has further argued that once a witness has been given up as unnecessary, then thereafter, at any stage of trial, the witness cannot be summoned or recalled because it will prejudice the rights of the accused. He has also relied upon judgment of this

Court in *Paramjit Kaur Thandi Vs. State of Punjab and others, CRR No.2553-2016*, decided on 06.03.2019, to contend that the impugned order passed by the learned Judge, Special Court was erroneous.

I have heard the learned counsel for the petitioner and perused the paper book.

In the present case vide Annexure P1, as reproduced above, initially along with other witnesses inadvertently on the statement of learned Addl. P.P. for the State, Inspector Sanjiv Kumar was given up as unnecessary but thereafter, the prosecution moved an application under Section 311 Cr.P.C. for summoning the said witness vide application Annexure P2, which is reproduced as under:-

- 1. The above noted case is pending in this Court and is fixed for today.*
 - 2. That in this case Inspector Sanjeev Kumar FDK produced the accused in the Court and also got conducted inventory proceedings from the Court and his name has been mentioned at Sr. No.6 and 14 in the list of witnesses but inadvertently he has been given up by Addl. PP on 16.08.2019 being unnecessary.*
 - 3. That summoning of Inspector Sanjeev Kumar is necessary for the just decision of the case.*
 - 4. That no prejudice will be caused to the accused as he will have the right to examine the witness.*
- It is therefore, prayed that above mentioned witness be summoned in the interest of justice.”*

A bare perusal of the application would show that it has

been categorically prayed by the prosecution that in the present case Inspector Sanjeev Kumar, FDK, had produced the accused in the Court and had also got conducted inventory proceedings from the Court but he was inadvertently given up by the learned Additional P.P. on 16.8.2019. It is further categorically stated in the application that the summoning of said witness is necessary for just decision of the case. The judgment cited by the learned counsel for the petitioner is distinguishable in the present case because in that case reasons were recorded by the trial Court and the application which was moved by the petitioner of that case did not show as to how the examination of the police officer was necessary for the just decision of the case.

In the above stated case, the High Court relied upon the judgment of Hon'ble the Supreme Court in **Rajaram Prasad Yadav Vs. State of Bihar and another, 2013 (3) RCR (Criminal) 726 and Vijender Vs. State of Delhi 1997 (2) RCR (Criminal), 256.** Hon'ble the Supreme Court in **Rajaram Prasad Yadav (supra)** has laid down the following principles which were 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.”

In the present case although the witness was left out at initial stage but it is the categorical stand of the prosecution in the application that the said witness is necessary for the just decision of the case. This witness had produced the accused in the Court and also got conducted inventory proceedings from the Court but at the initial stage, he was given up by the learned Addl. PP as unnecessary.

The scope of Section 311 Cr.P.C. is large enough that in such like cases 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 present case is alleged recovery of 5000 intoxicating tablets Marka Clovidol – 100 SR B.No.PT-097MFG 12/2018 and the learned trial Court vide impugned order has observed that oversight in the management of the prosecution cannot be treated as irreparable lacuna and no party in a trial can be fore-closed from correcting errors. 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. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who amongst the parties performed better. It has been categorically observed by a well reasoned order by the learned trial Court that evidence of above stated witness namely Inspector Sanjeev Kumar is very material and necessary just to prove the case and no produce is going to be caused to the accused if the application, in hand, is allowed and the petitioner will have the right to cross-examine the witnesses and therefore, allowed the application under Section 311 Cr.P.C.

In view of above factual position in the present case and in view of the law laid down by Hon'ble the Supreme Court, I do not deem it proper to interfere in the present case and therefore, the present petition is hereby dismissed.

February 13, 2020.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No