

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

Crl. Misc. M 8335 of 2020 (O&M)
Date of decision: 27.2.2020

Kanupriya Sinha

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Arnav Sood, Advocate,
for the petitioner.

JAISHREE THAKUR, J.

1. The petitioner herein seeks to challenge the order dated 31.1.2020 passed by the Judicial Magistrate 1st Class, Gurugram, whereby the application filed under Section 311 of the Code of Criminal Procedure (hereinafter referred to as '**the Code**') seeking permission to summon 16 witnesses in additional evidence has been dismissed.

2. In brief, the facts are that an FIR No. 376 dated 23.11.2013 was got registered by the petitioner under Sections 498-A, 323/34 IPC on the allegations that the petitioner—complainant was subjected to physical assault by the accused persons mentioned therein, apart from misappropriation of *Istridhan*. After investigation report under Section 173 of the Code was prepared and submitted in the Court and the trial was set in motion. Respondent No.1 was charge-sheeted for the commission of offence punishable under Section 498-A, 323 and 406 IPC. The prosecution evidence was closed on 28.8.2019 and after that the present application was filed by the petitioner seeking to summon 16 witnesses, who

would testify to the facts that there were various incidents of assaults upon the complainant and misappropriation of *istridhan*. The said application was dismissed on the ground that the petitioner had earlier also filed an application under Section 311 of the Code and she could have sought permission to summon these witnesses at that point of time, but she did not do so. The application earlier filed was dismissed by order dated 8.12.2018 and there was an order dated 12.9.2018 passed by this Court directing the trial court to conclude the trial at the earliest by giving short adjournments.

3. Learned counsel appearing on behalf of the petitioner herein contends that there are observations of the court which would reflect that *“the evidence of ASI Sandeep Ahlawat and doctor of Max Hospital can be somewhat relevant as it would show the conduct of complainant after the alleged harassment”* but despite the said observations the application has been dismissed. It is argued that provision of Section 311 of the Code read in its entirety would show that the Court is empowered to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding under CrPC or to summon any person as a witness, or to recall and re-examine any person who has already been examined, if his evidence appears to it, to be essential to the just decision of of a case. It is argued that there are catena of judgments which laid down the principle regarding summoning of a witness and underline the wide powers of the Court under Section 311 of the Code to summon any witness at any stage of the trial. Reliance in this regard has been placed upon the judgments rendered in **Zahira Habibullah Sheikh & Anr vs State of Gujarat & Ors**

2004 (4) SCC 158, Rajaram Prasad Yadav vs State of Bihar & Anr 2013

(14) SCC 461, Natasha Singh v. CBI, (2013) 5 SCC 741 and Manju Devi Vs. State of Rajasthan and another Criminal Appeal No. 688 of 2019 decided on 16.4.2019.

4. At this stage, though notice has not been issued, appearance has been caused by Mr. Abhimanyu Singh, Advocate, on behalf of respondent No.2, who opposes grant of another opportunity to the petitioner to lead evidence by summoning additional witnesses. It is argued that similar application had already been filed and the same stood dismissed, as has been noticed by the court below.

5. I have heard learned counsel for the parties and find that some of the witnesses sought to be summoned would be relevant for fair and just conclusion of the trial.

6. Admittedly, an application for additional evidence was filed under Section 311 of the Code, which stood dismissed. There is no dispute with the proposition of law as settled by the judgments, referred to above, that Section 311 of the Code empowers the Courts to call any witness or re-examine any witness at any stage of the trial but discretion to summon a witness under Section 311 of the Code must be exercised judiciously for a valid reason. The underline principles to summon a witness have been laid down in the judgment rendered by the Supreme Court in **Rajaram Prasad Yadav's case (Supra)**, the underline principle being that the courts must be satisfied that it would be in fact essential to examine such a witness or recall him for further examination in order to arrive at a just decision. In **Natasha Singh's case (Supra)**, the Hon'ble Supreme Court held as under:-

“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.**, 2004(2) R.C.R.(Criminal) 836 ; **Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.**, 2006(2) R.C.R.(Criminal) 448 ; **Kalyani Baskar (Mrs.) v. M.S. Sampooranam (Mrs.)**, 2007(1) R.C.R.(Criminal) 311 : 2007(1) Recent Apex Judgments (R.A.J.) 68 : (2007)2 SCC 258; **Vijay Kumar v. State of U.P. & Anr.**, 2011(4) R.C.R.(Criminal) 208 : 2011(5) Recent Apex Judgments (R.A.J.) 147 : (2011)8 SCC 136; and **Sudevanand v. State.**”*

7. In the instant case, the allegations in the complaint made by the petitioner are that her husband used to harass and torture her and also used to inflict physical and mental torture upon her. In order to establish these allegations amongst others, she wants to examine her father Shri K.G. Prasad, ASI Sandeep Ahlawat and domestic help Guri Shankar and Sanjay Manda. Even though the father of the petitioner had not been examined on earlier occasion, the learned counsel for the petitioner contends that it was duty of the prosecution to have cited him as a witness, which he had failed

to do so. These are material witnesses who could testify with regard to the various incidents that took place as mentioned in the complaint. The statement of Shri K.G. Prasad, father of the complainant, would be relevant as he would be best witness to recount tortures meted out to the complainant. ASI Sandeep Ahlawat is the person whose name is reflected in the FIR itself, who would be able to testify the fact that he had responded to the phone call made and had taken down written complaint. Apart from that, two persons sought to be summoned, namely Guri Shankar and Sanjay Manda, are the persons, who were working as domestic help in the matrimonial home of the petitioner and they would be in a position to testify about the physical assaults meted out to the petitioner at the instance of respondent No. 2. In this fashion, it would be relevant for the purpose of arriving at a fair conclusion whether or not the petitioner herein had been subjected to physical and mental torture. In this background, the argument as raised by the learned counsel for the respondent that the complaint ought to have examined her father Shri K.G. Prasad at the very instance and he is now being sought to be summoned only to delay the trial appears to be not correct.

8. Therefore, in the opinion of the Court, since the proceedings have been initiated regarding misappropriation of *Istridhan* and physical assault, statement of the persons sought to be summoned as additional evidence, namely Shri K.G. Prasad, ASI Sandeep Ahlawat and two domestic help, namely Gauri Shankar and Sanjay Manda, would be vital to arrive at a fair conclusion. The reasoning given by the trial court while dismissing the application that this is a time bound case, cannot be accepted as it would

scuttle the right of the petitioner to have a fair chance to prove her case.

9. For the reasons afore-stated, this petition is allowed. The application of the petitioner filed under Section 311 of the Code is partly allowed and she is permitted to examine Shri K.G. Prasad, ASI Sandeep Ahlawat and two domestic help, namely Gauri Shankar and Sanjay Manda, as additional evidence. The case before the trial court is stated to be fixed for 2.3.2020. Under the circumstances, the trial court is directed to adjourn the case for 12.3.2020, on which date the petitioner herein would be given one effective opportunity to bring her above four witnesses at her own risk and responsible. It is made clear that no further opportunity would be given to the petitioner to examine her above four witnesses, until and unless there are extreme circumstances compelling the court to adjourn the case.

27.2.2020

prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No