

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

**CRM-M No.18272 of 2014 (O&M)
Date of decision: 19.03.2020**

Anita

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Vikram Singh, Advocate for the petitioner.

Mr. Saurabh Girdhar, AAG, Haryana.

Mr. Sanjiv Gupta, Advocate for respondent No.2.

SUVIR SEHGAL J.

Present petition has been under Section 482 of the Code of Criminal Procedure for setting aside order dated 03.05.2014 (Annexure P-5) passed by the Judicial Magistrate 1st Class, Karnal vide which application under Section 311, Cr.P.C., filed by the petitioner has been declined.

Facts, in brief, are that petitioner was in possession of area measuring 20 Bighas-03 Biswas of Khasra No. 4500, Kasba Karnal. She had built a house and was residing there. One Balbir Diwan had shown interest in the said property. The petitioner had also filed suit for permanent injunction qua the said property, wherein vide order dated 22.08.2006, the court had granted injunction restraining the defendant from dispossessing her and interfering in her possession. The property was demarcated by the Assistant Collector, 2nd Grade, Karnal, who

submitted his report in the civil court. On 06.04.2007, Balbir Dewan, Vikram Rana, respondent no. 2, came with the police and unruly elements and demolished her house and dispossessed her from the property in dispute. She moved a representation, whereon the Additional Deputy Commissioner, Karnal, gave a report dated 18.07.2007, Annexure P-1. On these allegations, FIR No. 482 dated 19.09.2008 was registered under Section 447, 448, 427, 34, IPC at Police Station City Karnal against respondent no. 2 and others.

During investigation, it was found that both parties were involved in numerous cases against each other. Final report was submitted before the trial Court and charges were framed against the accused. During the pendency of the trial an application, Annexure P-3, under Section 311, Cr.P.C. was filed by the petitioner for summoning three witnesses by way of additional evidence. Respondent no. 2 contested the application by filing reply dated 10.10.2013, Annexure P-4. After hearing, the trial court by impugned order dated 03.05.2014, Annexure P-5, dismissed the application.

Counsel for the petitioner has argued that the trial court has erred in holding that the proposed evidence is not material and that permitting additional evidence will result in delay in the proceedings. He submits that the facts on the basis of which the witnesses are sought to be produced was brought to the notice of the Investigating Officer, but he neither made those part of the challan nor the said persons were summoned as witnesses by the prosecution. He relied upon a judgment of this Court in ***Janeshwar Dutt vs. Sanjiv Kumar*** 2007 (2) Civil Court Cases 693. On the other hand, counsel for respondents have opposed the

prayer on the ground that the witnesses were neither necessary nor their presence was required for the just decision rather the evidence, sought to be produced, has already been considered and discarded by the trial court when it passed judgment and decree in civil suit filed by the petitioner, which are already on the record.

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

Section 311 of the Code of Criminal Procedure is as under:

"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."

This provision came up for interpretation before the High Court of Himachal Pradesh in **Kewal Gupta Vs.State of H.P.** 1991 CrLJ 400, wherein it was held that provision of Section 311, Cr.P.C. will be rendered nugatory if only those witnesses are permitted to be examined whose statements have been recorded by the police under Section 161 of the Code of Criminal Procedure and their names find mention in the list of witnesses submitted with the challan under Section 173 of the Code. It

was further held that Sections 161, 173 and 311 of the Code of Criminal Procedure, have got different object, scope and operate in different spheres.

The Hon'ble Supreme Court in ***Rajaram Prasad Yadav Versus State of Bihar and another*** 2013(3) RCR (Criminal) 726 after examining the provisions of Section 311 Cr.P.C. and Section 138 of the Evidence Act, culled out the following principles which have to be kept in mind while deciding 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 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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.”

The cardinal principle which has been laid down by the Hon'ble Supreme Court is that the presence of the witnesses and the production of evidence is necessary for the just decision of the case. With this in mind the evidence proposed to be adduced by the petitioner deserves to be examined. The petitioner has sought examination of the following three witnesses along with certain record:

"a. Sh. Dalbir Singh, Official Consolidation Department, Karnal, along with the demarcation report regarding Khasra No.4500 min area measuring 20 bighas 3 biswas, Khasra No.4501 area measuring 0 bigha 19 Biswas, situated at Kasba Karnal, Tehsil and Distt. Karnal, which was conducted in case No.363/Nishan Dehi on the discretion of Tehsildar Karnal along with copy of application for demarcation as well as site plan prepared at the site while demarcating the land.

b. *AFSO Karna/ along with the record of Ration Card No.3311458 in the name of applicant's husband Dharampal son of Sh.Phool Singh, resident of House No.530- Chand Sarai, Karnal, Depot No.1140 of Shri Chattar Singh, Registration No.372.*

c. *Sh. Rishipal, Meter Reader o/o SDO (OP) UHBVNL, Sub Division, Model Town, Karnal, along with the record of Electricity Connection bearing account No.LN-26-3748 in the name of the applicant- Anita."*

It has been argued by counsel for respondent No.2 that the petitioner had filed Civil Suit No.461 of 1999, plaint and site plan of which are on the record as Ex D-1 and Ex. D-2. The said three witnesses have been produced the petitioner and their evidence has already been considered by the court while deciding the suit filed by her. The spot in dispute had been inspected by the Tehsildar, Karnal under the orders of the Additional District Judge, Karnal. Demarcation report, Ex. D-5, was prepared in the presence of the petitioner and her husband who were witnesses in the civil suit. The record of ration card and the electricity connection were also before the civil court. After discussing the entire evidence, the Civil Judge, Karnal, by judgment and decree dated 06.11.2002, recorded the finding that the house of the petitioner was never part of Khasra No.4500. The judgment of the civil court dated 06.11.2002 and decree sheet are exhibited as Ex.D-3 and Ex. D-3/A in the present trial. This aspect could not be disputed by the counsel for the

petitioner. In view of this position, the presence of the said officials is not necessary for the just decision of the case.

In *Janeshwar Dutt's case* (supra), relied upon by the counsel for the petitioner, this Court held that if some evidence could not be produced by the complainant due to oversight, the same can be permitted by taking recourse to Section 311, Cr.P.C. However, that is not the position in the present case. It is not mandatory for the trial court to summon a witness, if his evidence is not essential for the correct decision of the case.

Accordingly, there is no merit in the present petition. The same is dismissed with no order as to costs.

19.03.2020

pooja saini

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No