

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

1. CRM-M-30860-2017 (O&M)

Sandeep Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

2. CRM-M-30863-2017 (O&M)

Sandeep Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

3. CRM-M-30864-2017 (O&M)

Sandeep Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

Reserved on : 24.01.2020
Pronounced on : 28.01.2020

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Vikram Chaudhary, Sr. Advocate with
Mr. Rahil Mahajan, Advocate
for the petitioner in all the petitions.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Mohinder Kumar, Advocate
for respondent Nos. 2 to 4 in all the petitions.

ARVIND SINGH SANGWAN, J.

1. Prayer in the first petition is for setting aside the order dated 06.07.2017, passed by the trial Court in case FIR No. 41 dated 24.08.2011, registered under Sections 37, 51, 52-A, 63, 68-A of the Copy Right Act and Sections 420 and 120-B of the IPC at Police Station 'D' Division, Amritsar, vide which the application moved by the petitioner/complainant for leading additional evidence under Section 311 Cr.P.C. was dismissed; as well as for setting the order dated 01.08.2017, passed by the Additional Sessions Judge, whereby the revision filed by the petitioner against the order dated 06.07.2017 was also dismissed.

2. Prayer in the second petition is for setting aside the order dated 06.07.2017, passed by the trial Court in case FIR No. 31 dated 13.07.2011, registered under Sections 37, 51, 52-A, 63, 68, 69 of the Copy Right Act and Section 420 IPC at Police Station 'D' Division, Amritsar, vide which the application moved by the petitioner/complainant for leading additional evidence under Section 311 Cr.P.C. was dismissed; as well as for setting the order dated 01.08.2017, passed by the Additional Sessions Judge, whereby the revision filed by the petitioner against the order dated 06.07.2017 was also dismissed.

3. Prayer in the third petition is for setting aside the order dated 06.07.2017, passed by the trial Court in case FIR No. 37 dated 16.08.2011, registered under Sections 37, 51, 52-A, 63, 68-A of the Copy Right Act and Sections 420 and 34 of the IPC at Police Station 'D' Division, Amritsar, vide which the application moved by the petitioner/complainant for leading additional evidence under Section 311 Cr.P.C. was dismissed; as well as for

setting the order dated 01.08.2017, passed by the Additional Sessions Judge, whereby the revision filed by the petitioner against the order dated 06.07.2017 was also dismissed.

4. Since the prayers made in the aforesaid petitions and the facts therein are similar and even they involve the same parties, this common order shall dispose of all the three petitions, however, for the sake of convenience, the facts are being extracted from the first petition.

5. It is worth noticing here that these cases are pending since 2017 and while issuing notice of motion on 23.08.2017, passing of the final order was stayed and on 04.12.2019, keeping in view the fact that the cases before the trial Court were at the stage of final arguments, these cases were ordered to be listed after the urgent list.

6. Brief facts of the case are that petitioner/complainant Sandeep Kumar got the aforesaid FIRs registered with the allegations that he has been appointed as authorized representative by the various agencies including M/s M. S. M. Discovery Private Ltd., SUN 18 Media Services North Pvt. Ltd., M/s Eagle Cable Communications. It is further stated that private respondents/accused are the TV operators of communication agencies, which are broadcasting/screening films, songs and various other programs which is causing loss of revenue to the distributors of the company as well as the Government by their illegal act. Accordingly, the petitioner filed a complaint with the Commissioner of Police, pursuant to which, FIR No. 302 dated 27.12.2010 was registered against respondent No. 2 Gurdev Singh Bhullar. Thereafter, the police raided the premises and recovered certain duplicate CDs, DVDs etc. It is also stated that in total six

FIRs were registered against respondent No. 2 Gurdev Singh Bhullar and his associates for the infringement of Copy Right Act as well as different Sections of the Indian Penal Code.

7. The police, on completion of investigation, submitted the report under Section 173 Cr.P.C. in all the cases and the charges were framed on 14.08.2013 and the cases were fixed for prosecution evidence. Petitioner/complainant Sandeep Kumar appeared as his own witness i.e. PW-5. The petitioner/complainant supported the prosecution version while stating that he has been authorized by the various companies and he is the power of attorney holder of such companies. The statement of the petitioner was recorded on 18.02.2015 and thereafter, the trial Court recorded the statement of other witnesses, however, the petitioner did not exhibit the power of attorney in his favour. The trial Court granted as many as 44 opportunities to prosecution in a span of three and a half year which include the two last opportunities given on 04.11.2015 and 13.07.2016 and ultimately, the evidence of the prosecution was closed by the Court order on 20.03.2017.

8. During the course of trial, when the case was fixed for the prosecution evidence, the petitioner moved an application under Section 311 Cr.P.C. which was allowed by the trial Court on 11.01.2017 granting two effective opportunities to the petitioner to conclude his evidence and in pursuance thereof, one witness i.e. PW-11 was examined, whereas the petitioner never examined himself as witness and accordingly, the trial Court closed the evidence on 20.03.2017 as noticed above.

9. The trial Court thereafter recorded the statement of accused

under Section 313 Cr.P.C. on 12.04.2017 and when the case was fixed for the defence evidence, the petitioner/complainant moved the second application under Section 311 Cr.P.C. (the present application) seeking to lead additional evidence.

10. A perusal of the present application under Section 311 Cr.P.C. shows that it is prayed that the petitioner/complainant be granted permission to produce the original agreement/power of attorney along with the CDs which were handed over to the police during investigation but the same were not made part of the report submitted under Section 173 Cr.P.C. A perusal of the present application further shows that the petitioner/complainant has already been examined in this case and since the accused have raised an objection about the power of attorney in favour of the petitioner, in order to prove the same, the authorized signatories of M/s M. S. M. Discovery Private Ltd. and SUN 18 Media Services are sought to be examined as additional witnesses by way of the present application. This application was contested by the private respondents/accused on the ground that on the earlier occasion, when the first application was moved, the petitioner had the very knowledge about the objection raised by the defence counsel as the petitioner was examined as witness at the initial stage of recording of evidence and despite the first application having been allowed, the petitioner failed to conclude the evidence and the same was closed by the Court order.

11. The trial Court, vide impugned order dated 06.07.2017, dismissed the second application moved under Section 311 by the petitioner. The operative part of the order reads as under:

“I have heard both the counsels and gone through the record. No doubt that the court is empowered U/s 311 Cr.P.C. with ample power to summon any witness or document which is necessary for the just decision of the case, however, the said power U/s 311 Cr.P.C. is required to be exercised properly and judiciously. Now it would transpire from the record of the present case that the charge in the present case has been framed against the accused on 13.08.2013 and, thereafter, the prosecution has availed a number of opportunities. It has been further bone out of the record that earlier also another application under Section 311 Cr.P.C. was moved which was allowed by the Ld. Predecessor of this Court vide order dated 11.01.2017. Now while allowing the application the Court had directed the prosecution to conclude its evidence within two effective opportunities. However, thereafter, the prosecution has availed several opportunities but failed to conclude its evidence and as such the evidence of the prosecution was closed by order vide order dated 20.03.2017 by the Ld. Predecessor of this Court. The statement of the accused persons were recorded on 12.04.2017 and, thereafter, the case was fixed for defence evidence. Now, at this stage, when case is fixed for defence evidence the present application has been moved by the prosecution to lead additional evidence. However, the prosecution has failed to explain as to why the said evidence was not led at the time when the case was fixed for prosecution evidence during the long period of 4 years. Thus, the application at this belated stage cannot be allowed as the same would result in filling up the lacuna which is not permissible as per the provisions of Section 311 Cr.P.C. As such, the application in hand is dismissed. Case is adjourned to 14.07.2017 for defence evidence.”

12. The petitioner preferred a revision petition before the Court of Sessions, however, the same was also dismissed by passing the impugned order dated 01.08.2017. The operative part of the order reads as under:

“6. The perusal of the file of the trial Court reveals that when the case was fixed for defence evidence and arguments, complainant Sandeep Kumar moved an application to lead additional evidence under section 311 of Cr.P.C on 5.6.2017 on the ground that applicant wants to examine authorized signatory of the power of attorney in favour of complainant Sandeep Kumar to prove the power of attorney. This power of attorney is already on the file. It has been exhibited as Ex.PW5/B. The plea of the complainant is that counsel for the accused has raised objection that this power of attorney is not proved as per Evidence Act, so in order to prove the power of attorney, the complainant wants to examine the authorized signatory, who has given power of attorney to the complainant. When the applicant at the time of leading the evidence has knowledge of power of attorney, on the basis of which he has moved the complaint, resulting in registration of the FIR, even then no step has been taken to prove the power of attorney or to examine the authorized signatory, who has given the complainant the power of attorney and this objection was taken when evidence was being led. Now when this case is fixed for defence evidence, the application has been moved, which clearly shows that this application has been filed only to fill the lacunas, which is not the spirit of the provisions of section 311 of Code of Criminal Procedure. Moreover in this case previously also an application under section 311 of Cr.P.C was filed, which was decided on 11.1.2017. Even at that time statement of Sandeep Kumar complainant has already been recorded as his

statement was completed on 30.9.2016. But even at that time complainant has not acted with due diligence to examine the witness he wants to examine by moving another application for additional evidence. The powers to invoke provisions of section 311 of Cr.P.C are to be exercised by the Court judiciously and not that at any time the application can be entertained and evidence can be taken by the court as per desire of the prosecution or the complainant. As in the present case when the evidence was being led, the application for additional evidence was moved, which was allowed. Now when the evidence was closed by orders of the Court and case was fixed for defence evidence, the another application was moved, which is sheer misuse of process of law. I do not find any illegality in the order of the trial Court dismissing such application.

7. In view of above discussion, I do not find any illegality and perversity in the order dated 6.7.2017 passed by trial Court. Hence present revision is dismissed. Record of lower court alongwith copy of this order be sent back forthwith. The parties are directed to appear before the trial Court on the date already fixed there. Present revision file be consigned to record room, after due compliance.”

13. Learned senior counsel, assailing the impugned orders passed by the Courts below, has argued that in fact no proper opportunity was granted to the petitioner to prove the power of attorney though the same is exhibited as Ex. PW5/1 but since the respondents/accused have raised an objection regarding its admissibility, the authorized signatories of the companies concerned be permitted to be examined as additional prosecution witnesses.

14. Learned senior counsel has relied upon **2019 (5) RCR (Criminal) 750 Manju Devi vs. State of Rajasthan and another** to submit that Hon'ble Supreme Court, in the given facts and circumstances of the case, held that the application moved under Section 311 Cr.P.C. deserves to be allowed as one of the witnesses, who conducted the postmortem in Nigeria, is a necessary witness and allowed the application of the prosecution to examine the said doctor. It was noticed that though the said doctor was not even named as a witness by the police, however, in order to form a definite opinion regarding the time and cause of death, the recording of statement of said witness/doctor was allowed to be recorded through video conferencing.

15. Learned senior counsel has further argued that a perusal of the two orders passed by the trial Court would show that after the first application under Section 311 Cr.P.C. was allowed for additional evidence, only one witness was examined and summons to petitioner were issued for the next date but since the petitioner could not appear on the next date, the evidence was closed by the Court order and, therefore, the petitioner was not permitted to be re-examined.

16. Learned counsel for the private respondents/accused has, however, opposed the prayer of the petitioner/complainant on the ground that despite availing more than 44 opportunities, the petitioner failed to conclude his evidence and, therefore, the evidence was closed by the Court order and prior to that, the first application moved by the petitioner under Section 311 Cr.P.C. was allowed and one more witness was examined as PW-11 and the petitioner himself was negligent as he never opted to be

examined again in pursuance to the order allowing the first application.

17. Learned counsel for the private respondents/accused has drawn attention of this Court to the affidavit of respondent No. 2 Gurdev Singh Bhullar to submit that at the instance of the petitioner, he has been involved in number of cases/FIRs in a sequence, out of which, in some of the cases, he stands acquitted. It is also stated that involvement of the private respondents/accused are on account of political pressure.

18. Learned counsel for the private respondents/accused further argued that the petitioner got the aforesaid FIRs registered alleging himself to be a power of attorney holder of different media firms but he never produced such power of attorney when he was examined as witness way back in the year 2015 and he never made any such prayer when the first application under Section 311 Cr.P.C. was moved by him at the stage when the case was fixed for prosecution evidence.

19. Learned counsel for the private respondents/accused further argued that even the closure of evidence by the Court order is not challenged by the petitioner and rather, he filed the present application under Section 311 Cr.P.C., which has rightly been dismissed by the Courts below.

20. Learned counsel for the private respondents/accused further submitted that on account of giving a wrong statement about an order of this Court, an application under Section 340 Cr.P.C. has been filed against the petitioner, which is also pending before the trial Court.

21. Learned counsel for the private respondents/accused has relied upon **2014 (1) SCC (Cri) 493 Dr. Rajesh Talwar and another vs. C.B.I.**

and another to submit that where it is found that an applicant is adopting dilatory tactics, a criminal court is not obliged to accede to the request made by any party to entertain and allow the application for additional evidence and the court can refuse such request if it appears that the same is made in order to vex the proceedings or delay the same. The operative part of the aforesaid judgment reads as under:

“10. This Court in *Selvi J. Jayalalithaa & Ors. v. State of Karnataka & Ors.* (Writ Petition (Crl.) No.154 of 2013) decided on 30.9.2013, after referring to its earlier judgments in *Smt. Triveniben v. State of Gujarat*, AIR 1989 SC 1335; *Zahira Habibullah Sheikh (5) v. State of Gujarat*, AIR 2006 SC 1367; *Capt. Amarinder Singh v. Parkash Singh Badal & Ors.*, (2009) 6 SCC 260; *Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi)*, AIR 2012 SC 750; and *Natasha Singh v. CBI*, (2013) 5 SCC 741, dealt with the issue of fair trial observing:

“Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the ‘majesty of the law’ and the courts cannot turn a blind eye to vexatious or

oppressive conduct that occurs in relation to criminal proceedings.

Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

xx xx xx xx Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights.”

11. Thus, from the afore-stated facts, it is evident that petitioners have been adopting dilatory tactics on every moment. The impugned order was passed on 19.7.2013. This petition was filed after about two months.

12. In view of the above, we are of the considered opinion that facts and circumstances of the case do not

warrant any interference. The special leave petition is accordingly dismissed.”

22. Learned counsel for the private respondents/accused has also relied upon **2019 (2) Scale 654 Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, wherein Hon'ble Supreme Court has held that it is well settled that the power conferred under Section 311 Cr.P.C. should be invoked by the court only to meet the ends of justice and for strong and valid reasons and it should be exercised with great caution and circumspection. The operative part of the judgment reads as under:

“12. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

13. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier is not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.

14. In the instant case, the case was registered in the year 1983. 29 prosecution witnesses have already been

examined. The application of the prosecution to examine Mr. H.S. Tuteja was allowed in the year 2004. However, prosecution has failed to keep him in court for his examination. Thereafter, multiple applications have been filed to summon him and all of them have been allowed. However, the prosecution has failed to procure his attendance in the court.

15. As mentioned earlier, on 28.07.2011 the High Court of Calcutta gave the prosecution a last opportunity to procure his attendance and declared that in case of failure on the part of the CBI to procure the attendance of witnesses and get them examined, the Trial Court will proceed further with the trial without granting any further adjournment to the CBI. Even thereafter, the applications filed by the CBI have been allowed.

16. On 15.09.2014, yet again, the High Court in a criminal revision application observed that since the trial is pending for a long time, steps must be taken by the trial court to conclude the trial as expeditiously as possible, preferably within six months. Even thereafter, the trial court has allowed the application filed by the prosecution for summoning Mr. H.S. Tuteja, which order has been confirmed by the High Court. In our view, the High Court ought to have accepted the appeal and rejected the application of the prosecution for summoning the witness, Mr. H.S. Tuteja.

17. In the result, the appeal succeeds and it is accordingly allowed. The orders of the High Court dated 04.05.2017, as well as of the Trial Court dated 05.12.2014 are hereby quashed and the application filed by the Prosecutor for summoning Mr. H.S. Tuteja is hereby dismissed.”

23. After hearing learned counsel for the parties, I find no ground to interfere with the impugned orders passed by the Courts below, for the

following reasons:

- (a) As per FIR(s), the petitioner/complainant has claimed himself to be a power of attorney holder of various companies named in the FIR but while appearing as a witness on 18.02.2015, he has only stated that he is the power of attorney holder of various companies but never attached such power of attorneys in his favour, which is the sole basis for the petitioner to be a complainant in the present FIRs.
- (b) The affidavit of the respondent No. 2 Gurdev Singh Bhullar and impugned orders show that 44 opportunities were availed of by the petitioner including two last opportunities and thereafter, the petitioner moved the first application under Section 311 Cr.P.C. stating that he wanted to produce the original agreement/power of attorney, which was allowed by the trial Court granting two effective opportunities to the petitioner and in pursuance thereof, one additional witness was examined as PW-11, however, the petitioner never appeared. It shows that the petitioner took a very casual approach and, therefore, the evidence was closed by the Court order on 20.03.2017, which was never challenged by the petitioner. Rather, the petitioner filed the second application at the stage when the case was fixed for defence evidence with a new ground that he wants to lead

additional evidence and examine the authorized signatories of different companies. This ground was very much available to the petitioner when the first application was filed and was allowed.

- (c) A perusal of both the applications (first as well as the second application filed under Section 311 Cr.P.C.) would show that the petitioner has filed the same on account of the fact that private respondents/accused have raised an objection regarding admissibility of power of attorney in favour of the petitioner. In other words, it is a clear act on the part of the petitioner/complainant to fill up the lacuna, which is not permissible in view of settled law.
- (d) The ratio of law laid down by Hon'ble Supreme Court in ***Manju Devi's case (supra)***, relied by the petitioner, is distinguishable on the facts and circumstances of the present case.
- (e) In the judgments of Hon'ble Supreme Court in ***Dr. Rajesh Talwar*** and ***Swapan Kumar's cases (supra)***, relied by the private respondents/accused, it is held that the Court must exercise the power conferred under Section 311 Cr.P.C. for strong and valid reasons and with great caution and circumspection. In the instant case, the petitioner was never vigilant to produce the power of attorney throughout the trial and even failed to examine

himself as a witness when his first application under
Section 311 was allowed.

24. Therefore, finding no ground to differ with well reasoned
findings recorded by the Courts below, the present petitions, which are in
the shape of second revision, are hereby dismissed.

25. A photocopy of this order be placed on the file of other
connected cases.

January 28, 2020
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>