

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41574-2019

Date of Decision: 31.01.2020

Ashwani Sehdev

.. Petitioner

Vs.

State of Punjab

..Respondent

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Sanjeev Duggal, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, Asstt. A.G, Punjab.

...

Manoj Bajaj, J.

Petitioner/accused Ashwani Sehdev has preferred this petition under Section 482 Cr.P.C. to challenge the order dated 03.09.2019 (Annexure P-4) passed by the Id. Addl. Sessions Judge, Jalandhar, whereby the application filed under Section 311 Cr.P.C. for recalling the prosecution witness PW-4/complainant (Arzoo Shoor) for further cross examination was declined. The order arises from the trial proceedings in case FIR No.118 dated 18.08.2016, under Section 306 IPC, registered at Police Station Division No.4, Jalandhar.

On 28.01.2020, during course of hearing, it was noticed that the FIR in question was not on record and on request of learned counsel for the petitioner, the case was adjourned for today.

Learned counsel for the petitioner has produced the copy of the FIR along with its translated version.

The FIR in the present case was registered on the statement of complainant Arzoo Shoor daughter of Vikrant Shoor (deceased), wherein it

was alleged that her brother-in-law Lokesh Babbar raped her in the year 2012 and also clicked her photographs, and he further extended threats to her that if she would disclose it to anyone, he would kill her family members. The complainant disclosed this incident on 13.06.2012 to her cousin Deepika Babbar w/o Lokesh Babbar about her continuous rape committed by him and it resulted into a dispute within the family of Deepika Babbar. According to complainant, Lokesh Babbar died due to gun shot fired by Ramesh Babbar. After the death when the news of rape broke out among relatives then Ramesh Babbar, Kamlesh Babbar, Deepika Babbar and Meena Kumari, Rano Sehdev, Meenu Sehdev, Ashwani Sehdev, Mukesh Sehdev and Rahul Sehdev started insulting complainant's father Vikrant Shoor on his mobile phone by embarrassing him regarding rape of his daughter. One journalist named Sonia came and demanded ₹20,000/- from her father on pretext of not publishing news in the newspaper. Her father Vikrant Shoor got fed up from this and committed suicide and according to complainant, above said accused persons were responsible for this.

Learned counsel for the petitioner contends that during the trial, an important piece of evidence came to his knowledge, which is necessary to be put to the said witness Arzoo Shoor (PW-4) and, therefore, her further cross-examination is necessary. He has contended that the allegations of rape levelled by PW-4 in the FIR are apparently false and in support of this, he has invited the attention of the Court to the documents i.e. greeting cards (Annexure P-2) colly, which were found by one of the accused Deepika Babbar. He has further drawn the attention of the Court to the letter allegedly written by PW-4 to Lokesh Babbar, to contend that she was

willingly engaged in relationship with the husband of her cousin (Deepika Babbar). It is pointed out that the prosecution evidence is still going on and this piece of evidence was not previously within the knowledge of the accused and, therefore, it is necessary to confront the said witness with this material piece of evidence. He contends that during cross-examination of the said complainant, it is the defence set up by the accused that victim Vikrant Shoor got upset and felt humiliated on account of consensual relationship of his daughter with Lokesh Babbar, which led him to take the extreme step of committing suicide. He has emphasized on the suggestions made to PW-4 in this regard during her cross-examinations. According to him, if PW-4 is recalled for cross-examination, no prejudice would be caused to the prosecution. He submits that the impugned order deserves to be set aside and the application filed by the petitioner deserves to be allowed.

On the other hand, learned State counsel has opposed the prayer on the ground that the impugned order passed by the trial Court is well reasoned and does not warrant any interference. It is submitted that the Court has specifically noticed that proper opportunity for cross-examination of PW-4 Arzoo Shoor was given to the defence, who was cross-examined on 10.10.2017 and thereafter, on 08.01.2018. It is pointed out that she was again cross-examined on 11.12.2018 and finally her cross-examination concluded on 23.01.2019. According to him, the power under Section 311 Cr.P.C. is an extraordinary in nature and, therefore, the trial Court had rightly declined the prayer.

Before examining the merits of the case, it is necessary to have a glance at the provisions of Section 311 Cr.P.C which are extracted below:-

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.”

A plain reading of above makes it absolutely clear that this extra ordinary power has been vested with the trial Court to summon any person as a witness or recall and re-examine any person in case such evidence appears to be essential for the just decision of the case. The power contained under Section 311 Cr.P.C can be exercised by the Court “at any stage”, of any inquiry or trial or other proceedings.

The Hon'ble Supreme Court has discussed various pronouncement on the subject and in para 11 had relied upon “*Mohanlal Shamji Soni Vs. Union of India and another, 1991(3) R.C.R. (Criminal)*”, which is as under :-

“.....It is the duty of a Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case. It was emphasised that power is circumscribed by the principle that underlines Section 311 Criminal Procedure Code, namely, evidence to be obtained should appear to the court essential to a just

decision of the case by getting at the truth by all lawful means. Further, that the power must be used judicially and not capriciously or arbitrarily. It was further observed that evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties and the discretion of the Court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the sage guides and that only the requirement of justice command the examination of any person which would depend on the facts and circumstances of each case.”

No doubt, the power contained under Section 311 Cr.P.C. is to be exercised with great caution and circumspection, but at the same time, if there are justifiable reasons the trial Court can invoke this power to recall a witness as well.

After hearing learned counsel for the parties, this Court finds merit in the arguments raised by the learned counsel for the petitioner. A perusal of the impugned order reveals that the trial Court simply noticed the case proceedings including the examination and cross-examination of PW-4, but has not touched the ground raised by the accused seeking permission for recalling of the witness for further cross-examination. It may be true that cross-examination of PW-4 Arzoo Shoor was deferred on number of occasions, which was concluded after few dates, but at the same time, it is also evident from the order that the court has not examined the nature of the evidence sought to be put to the said witness, which is allegedly in her own handwriting. The contents of the letter prima facie carry strong relevance in

the context of the case set up by the prosecution. It may be noticed that it is nowhere pleaded by prosecution that his piece of evidence was previously within the knowledge of accused, therefore, this Court is of the opinion that the defence deserves to be given an opportunity to further cross-examine the prosecution witness PW-4, particularly when the accused has taken a defence that relationship between the complainant and Lokesh Babbar was with her consent.

In view of the above, the impugned order dated 03.09.2019 is set aside and the application filed by the petitioner under Section 311 Cr.P.C. is allowed and it is ordered that the trial Court shall recall the prosecution witness Arzoo Shoor (PW-4) for further cross-examination either on the next date of hearing or on any other date.

Petition is allowed.

31.01.2020

Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No