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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-48333-2019 (O&M)
Date of decision-08.01.2020

Gurarpan Chauhan

....Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. D.S.Gurna, Advocate for the petitioner.

Mr. Prabhjot Singh Walia, AAG, Punjab.

Mr. Bipan Ghai, Senior Advocate with
Mr. L.S.Sidhu, Advocate for the petitioner.

MANOJ BAJAJ, J.

Petitioner (accused) has filed this revision petition to challenge the order dated 12.09.2019 (Annexure P-8), whereby the trial Court has proceeded to allow the application dated 30.11.2019 filed by prosecution under Section 311 Cr.P.C for re-examination of PW-22 (MHC Jagtar Singh) and also for examination of three additional witnesses. The impugned order was passed during trial in case FIR No.72 dated 14.07.2013 registered under Sections 364-A, 307, 323, 324, 171, 148, 149, 120-B, 506, 420, 467, 468, 471 and 201 of Indian Penal Code, 1860, Sections 25, 54 and 59 of Arms Act, Sections 29, 61 and 85 of Narcotic Drugs and Psychotropic Substances Act, 1985 Act and Section 66-A of Information Technology Act, 2000 registered at Police Station Doraha, District Ludhiana.

The FIR was lodged on the statement of Harminderal Singh, owner of New Cone Switch Gear Private Ltd. wherein it was alleged that on 13.07.2013, at about 6.30 p.m., his son, namely, Manish Kumar alongwith his driver had gone from the factory in his BMW car bearing No.PB-10-DL-6575. His son made a phone call to the complainant in which he heard cries and call was disconnected. Thereafter, two phone calls were received and complainant was informed that his son has been kidnapped by the assailants who were in police uniform and armed with pistols. The kidnappers demanded ransom money of Rs.5 crores. The complainant paid the demanded money to the assailants, thereafter, they fled away.

After commencement of trial in the above FIR, the prosecution examined its witnesses and during trial an application was filed under Section 311 Cr.P.C for re-examination of PW-22, namely, MHC Jagtar Singh and also for examination of three additional witnesses, namely, Ms.Amandeep Kaur, concerned official of CFSL, MHC Jarnail Singh and Nodal Officer of Bharti Airtel Ltd. The said application was contested by the petitioner-accused by filing reply. Thereafter, learned trial Court vide its order dated 12.09.2019, proceeded to allow the application. Aggrieved against the said order, the present petition has been filed by the petitioner-accused.

Learned counsel for the petitioner contends that the trial Court has proceeded to allow the application through impugned order dated 12.09.2019 without assigning any valid reason. According to him, the power under Section 311 Cr.P.C cannot be exercised to permit the prosecution to

fill up the lacunae in its case. Mr. Gurna, Advocate has argued that the trial Court has proceeded to allow the application in a mechanical manner. Learned counsel for the petitioner further contends that the petitioner is languishing in jail for a long period and the prosecution is delaying the trial without any justifiable reason. He has invited the attention of the Court to the order dated 19.10.2016 passed in CRM-M-21048-2016, wherein direction was issued by this Court to complete the trial within six months. He submits that later on, vide order dated 27.03.2017, passed in CRM-M-45615-2016, again the trial Court was directed to conduct the trial on day to day basis and further not to entertain any application for grant of personal exemption on behalf of the accused. He submits that the impugned order is bad and therefore, warrants interference by this Court.

On the other hand, the prayer is opposed by learned State counsel as well as learned Senior counsel appearing on behalf of the complainant. It is contended that the power under Section 311 Cr.P.C is aimed to allow a party to lead additional evidence in order to facilitate the trial Court to arrive at a just conclusion. It is submitted that the majority of the witnesses are formal and therefore, the trial Court has rightly exercised the discretion under Section 311 Cr.P.C. It is prayed that the petition deserves to be dismissed.

Learned counsel for the parties have been heard and with their assistance I have gone through the case file carefully.

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:-

*“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.”*

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.

Essentially, before pressing into service this provision, the trial Court is required to form an opinion that the witness/evidence sought to be adduced under Section 311 Cr.P.C would facilitate it to arrive at a just conclusion. Before that it also becomes necessary for the trial Court to record a satisfaction that evidence sought to be adduced under Section 311 Cr.P.C is not only relevant, but it would also not cause any prejudice to the accused.

The Hon'ble Supreme Court in “**Vijay Kumar Vs. State of U.P and another**”, 2011 (4) R.C.R. (Criminal) 208, examined the scope of exercise of power under Section 311 Cr.P.C and made the following

observations:-

“There is no manner of doubt that the power under Section 311 of Code of Criminal Procedure is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that power under Section 311 should be exercised for the just decision of the case. The wide discretion conferred on the court to summon a witness must be exercised judicially, as wider the power, the greater is the necessity for application of the judicial mind. Whether to exercise the power or not would largely depend upon the facts and circumstances of each case. As is provided in the Section, power to summon any person as a witness can be exercised if the court forms an opinion that the examination of such a witness is essential for just decision of the case.”

The above judgment was further relied upon in “**Rajaram Prasad Yadav Vs. State of Bihar and another**”, 2013 (3) R.C.R. (Criminal) 726, wherein the following principles were laid down:-

- 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.

A perusal of the impugned order dated 12.09.2019 reveals that the trial Court has simply noticed the arguments of both the sides and proceeded to allow the application. There is no discussion regarding the relevance of the witnesses much less the satisfaction that the exercise of power under Section 311 Cr.P.C at the present stage of trial is justified. Therefore, the trial Court has allowed the application by passing a non-speaking order.

Now turning to the case in hand and upon analysis of the facts of the present case, this Court is of the considered opinion that as far as re-

examination of PW-22 (MHC Jagtar Singh) is concerned, the prosecution has set up a ground that after examination of Investigating Officer, namely, Amardeep Singh, SHO (PW-41) some variation in their statement regarding entries made in Register No.19 pertaining to deposit of the case property with MHC Jagtar Singh were noticed and therefore, the re-examination of this witness becomes necessary to remove the doubts and to clarify the fact relating to deposit of the case property. Here it may be noticed that after examination of PW-22, a similar request by prosecution for re-examination of this witness was allowed by trial Court vide order dated 06.10.2017 (Annexure P-2), on the ground that some ambiguity has crept in during the course of cross-examination of PW-22 qua deposit of case property i.e. the alleged revolver. Pursuant to the said order, this witness was re-examined on 07.10.2017. This Court finds that the trial Court has not given any reasoning in the impugned order regarding necessity to examine PW-22 once again. If a witness is recalled for re-examination repeatedly, it would certainly cause prejudice to the accused and his right to fair trial may be jeopardized. Resultantly, this Court is of the considered opinion that re-examination of PW-22, MHC Jagtar Singh is not justified. The impugned order to that extent is not sustainable.

The other three additional witnesses, namely, Ms. Amandeep Kaur, concerned official of CFSL, MHC Jarnail Singh and Nodal Officer of Bharti Airtel Limited, as per prosecution are required for proving the CFSL report; handing over of sealed parcel to HC Santokh Singh (PW-33) by MHC Jarnail Singh for deposit with the CFSL; and call details of the phone

calls made by the accused to the complainant, respectively. These three witnesses apparently are formal witnesses in nature. During the course of hearing, learned counsel for the accused/petitioner did not dispute this fact that the CFSL report has already been brought on record of the trial Court and copy has been supplied to the accused, and therefore, examination of witness, Ms. Amandeep Kaur (CFSL official) would not cause any prejudice to the accused. Similarly, witness HC Jarnail Singh was inadvertently not named in the list of witnesses filed by the prosecution with the final report and therefore, his examination which relates to handing over the sealed parcel of HC Santokh Singh (PW-33) for depositing with the CFSL is also formal in the light of the fact that witness HC Santokh Singh has already been examined by the prosecution. Likewise, the examination of the Nodal Officer of Bharti Airtel Limited would also not cause any prejudice to the accused, as from the beginning, the case of the prosecution is that the accused had made phone calls to the complainant to demand the ransom. It is needless to observe that the accused would have a right to cross-examine the above three additional witnesses, besides an opportunity to rebut the evidence of the prosecution. Therefore, the impugned order dated 12.09.2019 passed by the trial Court permitting the prosecution to examine these three additional witnesses is maintained.

In view of the above, petition is partly allowed and the impugned order dated 12.09.2019, permitting the re-examination of PW-22 (MHC Jagtar Singh) is set aside, however, the impugned order allowing the examination of three additional witnesses is maintained.

Since, the petitioner and other accused are confined in prison for a long time, therefore, it is requested that the trial Court shall examine these witnesses expeditiously, without any further delay.

(MANOJ BAJAJ)
JUDGE

08.01.2020

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No