

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

CRR-30-2021 (O&M)
Date of decision: 01.04.2021

Mamta

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Devender Arya, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Mr. Kehav Partap Singh, Advocate for respondent No.11.

H.S. MADAAN, J.

This revision petition is directed against order dated 23.12.2020, passed by Addl. Sessions Judge, Narnaul whereby an application U/s 311 Cr.P.C., for additional evidence filed by complainant was dismissed, during the trial in FIR No.320 dated 27.08.2018, for offences under Sections 148, 149, 323, 325, 302, 307, 452 and 506 IPC, registered with Police Station Kanina, District Mahendergarh. After framing of charge, the case was fixed for evidence of prosecution, during the course of which, the prosecution examined several witnesses including the complainant; thereafter, statements of the accused were recorded and the case was fixed for defence evidence, during that the accused led evidence to show that the

complainant was on duty on 26/27.08.2018, as such, he could not possibly be there at the spot; to rebut the evidence, the complainant Ashwani wanted to examine the official from Joginder Memorial Charitable Blood Bank, Rewari to show that he remained in the hospital on 27.08.2018, which fact is fortified by receipt No.1012/18/ under donor ID No.1519 and 1520 and from CCTV footage.

This application for additional evidence was opposed by the accused. The trial Court dismissed the application, vide impugned order dated 23.12.2020. The operative part of the order reads as under:-

“4. It is no more in dispute that when PW6 stepped into witness box he did not mention this important fact that he donated blood on 26/27.08.2018 to the deceased. During cross-examination as well he remained silent on this aspect. This application has been moved at the stage when case has been fixed for the defence evidence. When defence evidence was almost concluded this application has been moved. Like Civil matters a party cannot be allowed to take dual stand by blowing hot and cold at same time. During prosecution evidence complainant Ashwani remained in dole drum and did not disclose that he infact donated blood to any person at Rewari hospital. Video footage is not possible at this stage because video footage could have taken within one or two months of the incident. Incident pertains to 26/27.08.2018. Now, after more than 2 ½ years video footage is not possible to be produced or proved. So called blood donation evidence is not authentic being private record, it could be procured at back date and it bears no sanctity.

I also heard applicant in person, wherein he submitted that in fact he was present on the spot on 26/27.08.2018. He

submitted that he moved application to his Superior Officer of the department. However, he could not produce any document in this regard.

The case of applicant i.e. Ashwani seems to be doubtful from the point of view that he in fact on 26/27.08.2018 remained in Rewari at Joginder Memorial Charitable Blood bank, Rewari or at that time in hospital in the same City because he remained silent when he stepped into witness box as PW6. I agree with the contention of defence counsel that so called blood documents attached with the application could have been prepared at back date. Certainly, these documents have been prepared and intended to be produced in the evidence but for filling the lacuna in the case of prosecution. Court cannot forget that evidence produced in defence pertains to public record, wherein presence of Ashwani has been shown in his attendance register, where he was tendering service of a Mali. In these circumstances, this court see no substance in the application filed by prosecution u/s 311 of Cr.P.C. Consequently, same is hereby dismissed.”

I have gone through the impugned order and I find that the same is quite detailed and well reasoned and it does not suffer from any illegality or infirmity, much less apparent on the face of it. The order is certainly not perverse or against settled judicial parameters. Section 311 Cr.P.C., deals with power to summon material witness. It provides that the Court may, at any stage of any inquiry, trial or other proceedings, 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 it is mandatory for the Court to do so, if evidence of such person appears to be essential for the just decision of the case. Thus, the entire power is vested in the Court, which of course is to be exercised in a judicious manner and not in an arbitrary way. The power is not to be invoked to enable a party to fill up the lacuna or gaps in its case. The trial Court has given valid reasoning for rejecting the application and I do not see any reason to differ with that and to interfere with the order by exercising revisional jurisdiction. The revision petition is found to be without any merit and is dismissed accordingly.

Anything said herein above shall not be construed as an expression of opinion on the merits of the case.

01.04.2021

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(H.S. MADAAN)
JUDGE

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