

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

**(105)**

**CRR-416-2020**

**Date of decision : .02.2021**

**Maanu and another**

**...Petitioners**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. Raminder Chauhan, Advocate  
for the petitioners.

Mr. Rajiv Sidhu, DAG, Haryana  
for the State-respondent.

...

**SUVIR SEHGAL, J.**

The hearing of the petition has been taken up through video conferencing on account of outbreak of COVID-19 Pandemic.

Instant criminal revision has been filed under Section 401 of the Code of Criminal Procedure, 1973 by two of the accused, namely, Maanu and Sumit challenging the order dated 14.01.2020, whereby learned Sessions Judge, Bhiwani has partly allowed the application filed by Smt. Pushpa @ Usha and permitted her examination by the prosecution.

Facts, in brief, are that FIR No.195 dated 13.09.2016 was registered under Sections 302 and 120-B read with Section 34 of Indian Penal Code on a complaint dated 13.09.2016 given by Madan, wherein he

stated that his brother-in-law Kuldeep son of Satish had gone on a trip with his friends, Manoj, Maanu and Sumit. In the night intervening 12<sup>th</sup>-13<sup>th</sup> September, 2016, he sustained several injuries on his neck and face with a sharp edged weapon. As per his allegation, on 12.09.2016 at about 11.00 p.m., after taking meals the deceased slept with the above named three accused in the fields of Karambir. The next morning, he was found in an injured condition and was taken to a hospital, where he expired. This fact had been told to him by his mother-in-law, Smt. Pushpa @ Usha and she came to know about it from Sikander. In his cross-examination before the Court, the complainant deposed that he told these facts to the police, but the same had not been recorded in his statement. It was in these circumstances, Smt. Pushpa @ Usha, mother of the deceased, filed application dated 18.12.2019 under Section 311 Cr.P.C. (Annexure P-1). for her examination as a prosecution witness. In her application, she stated that on 04.09.2016, the three accused, Manoj, Maanu and Sumit whom she knew personally came to her house and took the deceased Kuldeep with them. She stated that all of them had left her house together for going on a tour and she had seen them going together and thereafter her son never returned home alive. She further stated that during the night of 12<sup>th</sup>/13<sup>th</sup> September, 2016, the deceased talked to her on mobile phone and told her that they were staying in the room of Dhrama's Machhlitalab (fish pond) at village Dariyapur and that they will return home the next day. The next morning, one Sikander called her and told her that her son Kuldeep had been injured and was being taken to Jindal Hospital, Hissar. The applicant informed her son-in-law,

Madan, who is the complainant, of these facts. She averred in the application that the police never contacted her during the investigation nor recorded her statement regarding the deceased having left the home in the company of the accused. She, therefore, submitted that it was essential that she be examined as a witness to arrive at the truth for the just decision of the case. Upon notice of the application, it was contested by all the three accused by filing separate replies. Public prosecutor supported the application. After hearing arguments, the learned Sessions Judge, Bhiwani, vide order impugned herein partly allowed the application.

Counsel for the petitioner has assailed the impugned order on two grounds. Firstly, he submits that the application by Smt. Pushpa @ Usha has been submitted by engaging a private counsel and has not been filed through a public prosecutor. He has placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rekha Murarka Versus State of West Bengal 2020 (1) RCR (Criminal) 171***, in support of his argument. Secondly, he has urged that the application had been filed at the fag end of the trial much after the prosecution evidence has been closed.

Advance copy of the petition has been served upon the State. Learned State counsel has put in appearance on behalf of the State and argued that the application has been duly supported by the public prosecutor. He has drawn the attention of the Court to the observations made to this effect in the impugned order.

I have considered the rival submissions of the parties.

Insofar as the first argument raised by counsel for the petitioner is concerned, it deserves to be noticed that the application filed under Section 311 Cr.P.C. by Smt. Pushpa @ Usha through a private counsel has been duly forwarded by the public prosecutor for her examination as a witness. This fact finds mention in the opening paragraph of the impugned order. Still further at the time of hearing of the application, the State has supported the case of the applicant. Learned State counsel, during the course of hearing of this revision petition, has also supported the impugned order and drawn the attention of the Court to para 5 thereof, wherein it is so recorded. In view of this, there is no substance in the argument of the counsel for the petitioner that the applicant did not have any locus to file an application for her appearance for her examination.

The Hon'ble Supreme Court in ***Rekha Murarka's*** case (supra) has observed that the realities of the criminal prosecution, as they are conducted today cannot be ignored and there is no denying that public prosecutors are often over-worked and the possibility of missing out certain aspects of the case cannot be ignored. The Hon'ble Supreme Court has held that a victim's counsel can make up for any over-sights for deficiencies in the prosecution case and some significant role should be given to the victim's counsel while assisting the prosecution. Though, at the same time, the balance inherent in the scheme of the Code of Criminal Procedure should not be tempered with and the prime role accorded to the public prosecutor should not be diluted. Since in the present case, the application has been forwarded as well as supported by the public prosecutor, the fact

that it has been filed through a private counsel loses significance.

Insofar as the second argument of the counsel for the petitioner is concerned, it is sufficient to say that Section 311 Cr.P.C. is couched in a wide language. The object underlying the provision is that there may not be any failure of justice on account of mistake of either party in bringing valuable evidence on record or leaving ambiguity in the statement of witnesses recorded from either side. The important factor is whether the examination of a witness is essential for the just decision of the case. The provision is not only limited for the benefit of the accused but even the prosecution. Wide power has been conferred upon the trial Court and in case it is of the opinion that the evidence of the witness is necessary for the just/proper decision of the case in order to arrive at the truth, the same can be allowed, even though, the application for examination may have been presented at the stage of the argument.

When examined in the light of the above settled position of law, this Court has no hesitation in coming to the conclusion that Smt. Pushpa @ Usha is a very material witness and her examination is necessary in order to find out the truth particularly with regard to the facts which are to her personal knowledge. An examination of the impugned order shows that the trial Court has come to the conclusion that non-grant of permission to examine her as a prosecution witness in respect to the facts to her knowledge will prejudice the prosecution. Relying upon second cause of Section 311 Cr.P.C., the Court has come to form of an opinion that her evidence is necessary for the just decision of the case. There is no

irregularity and illegality in the exercise of the jurisdiction by the trial Court.

Finding no merit in the Revision Petition, the same is dismissed.

(SUVIR SEHGAL)  
JUDGE

25.01.2021  
Pardeep

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|----------------------------|--------|
| Whether speaking/reasoned: | Yes/No |
| Whether reportable:        | Yes/No |