

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

**CRR No. 315 of 2021 (O&M)
Date of Decision: 18.03.2021**

Ritu

Petitioner

Versus

State of Haryana

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Chanderhas Yadav, Advocate for the petitioner.
Mr. Karan Garg, AAG, Haryana.

AVNEESH JHINGAN, J (Oral):

The matter is taken up for hearing through video conference due to COVID-19 situation.

Aggrieved of the order dated 12.3.2021 passed by Additional Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Jind allowing the application under Section 311 Cr.P.C., the petitioner is before this Court.

The brief facts are that on 16.12.2021 a secret information was received by the police party that one Swift car bearing registration No. HR-31M-1537 is being used by the accused including the petitioner for bringing Charas. The vehicle was checked and 4.5 kgs. of charas was recovered. After investigation, challan was produced in the court on 23.1.2018. Examination of prosecution witnesses started on 26.3.2018 and concluded on 18.3.2019.

An application under Section 311 Cr.P.C. was filed by the Public Prosecutor stating that due to inadvertence Nodal Officers of Idea and Airtel could not be examined inspite of that they were mentioned in the list of witnesses. The application was allowed, hence the present revision

petition.

Learned counsel for the petitioner submits that the court below erred in allowing the application at a belated stage of trial. The examination of witnesses would prejudice the case of the petitioner. He further submits that there is a direction by this Court in CRM-M-6468-2021 on 17.2.2021 that trial should conclude within six weeks and the application was moved thereafter on 8.3.2021. The argument is that impugned order is not in consonance with the Supreme Court's decision in Swapan Kumar Chatterjee v. Central Bureau of Investigation, 2019 (2) RCR (Criminal) 162.

Learned counsel for the State argues that the witnesses asked for to be examined were there in the list of witnesses, the call details were already on record and examination of the witnesses would be necessary to arrive at a just decision.

Section 311 Cr.P.C. empowers any Court at any stage of enquiry or trial or other proceedings to summon any person as witness or re-call or examine any person if it appears to be necessary for just decision of the case.

In present case the Nodal Officers of Mobile Companies were mentioned in the list of witnesses and the record of calls etc., was available on the file yet they were not examined due to inadvertence of the Public Prosecutor. The power under Section 311 Cr.P.C. can be exercised at any stage. There is no bar that the order for examination of the witnesses cannot be passed after the defence evidence is over. At the cost of repetition, it would be pertinent to note that call details and record of the mobile companies were made part of the supplementary challan and the Nodal Officers were mentioned in the list of witnesses submitted before the Court. Certificate under Section 65-B of the Indian Evidence Act, 1872 with regard to Customer Application Form and tower location was part of record.

The impugned order cannot be faulted merely as the application under Section 311 Cr.P.C. was moved after the directions of this Court to conclude trial within six weeks.

Reliance of learned counsel for the petitioner on Swapan

Kumar Chatterjee's case (supra) is of no help. Paragraphs 12 and 13 are quoted below:

“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 wide power under this Section to even recall witnesses for re-examination 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.”

In case before the Supreme Court, the FIR was of the year 1983, application under Section 311 Cr.P.C. was moved after a period of 21 years. Moreover, the court was not satisfied with the reasons mentioned for non-examination of the witnesses. It was observed that successive filing of applications for recall of a witness under Section 311 Cr.P.C. should not be encouraged.

In the case in hand, there is no such inordinate delay. It was inadvertent mistake of the Public Prosecutor that inspite of Nodal Officers of Mobile Companies being in the list of witnesses, could not be examined. In the impugned order, detailed reasons have been mentioned. It is the satisfaction of the court that examination of the witnesses is necessary for arriving at a just decision.

The Court is apprised that the petitioner is already on bail. The

direction of this Court to conclude the trial within six weeks itself cannot be a reason to dismiss the application under Section 311 Cr.P.C. Speedy conclusion of trial cannot be at cost of just and fair decision.

The revision petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

18th March, 2021
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |