

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

CRR-495-2021

Date of Decision: 27.04.2021

Baljinder Singh @ Kaka

Petitioner

Versus

State of Punjab and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Jimmy Singla, Advocate for the petitioner.

Ms. Monika Jalota, Deputy Advocate General, Punjab.

AVNEESH JHINGAN, J.

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

This criminal revision petition is filed being aggrieved of order dated 19th March, 2021 passed by the Sessions Judge, Barnala. The prayer under Section 311 of the Code of the Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') for further cross-examination of ASI Gurmeet Singh, Investigating Officer (hereinafter 'I.O.') and the complainant was declined.

The brief facts of the case are that on the statement of Harpreet Kaur, FIR No. 87, dated 9th June, 2019, under Sections 452, 324, 323 of the Indian Penal Code, 1860, was registered at Police

Station Dhanaula, District Barnala. It was stated that she was working as house-hold help. Her husband died in the year 2013. On 8th June, 2019 at about 6 P.M., Baljinder Singh @ Kaka s/o Buta Singh came near residence of complainant. Her mother-in-law who was standing in the street, objected to accused roaming in the street. The accused forcibly entered in the house of the complainant with an iron rod in his hand. He slapped the complainant and tried to molest her. When mother-in-law of the complainant tried to rescue, the accused after hitting threw her on the ground. The accused gave blows on left leg, the front side of her right leg and on the knee of the complainant. She was taken to Community Health Centre, Dhanola from where she was referred to the Civil Hospital, Barnala.

During the trial, statement of I.O. was recorded wherein he stated that the site plan was prepared and a *Sabal* (iron rod) was recovered at the instance of the accused. In the MLR, injury No.1 was declared grievous in nature. In his cross-examination, the defence posed questions to establish that there was prior enmity between the accused and the complainant. Suggestions were put that the complainant was demanding a plot of land and she in connivance with her mother in law, falsely implicated the accused.

The complainant in her statement supported the allegations in the FIR. In cross-examination, suggestion was made by the defence that accused was named only to extort a chunk of plot in an agricultural land.

The defence examined Buta Singh (father of the accused) who alleged that he had moved an application levelling allegations against the accused and the complainant. It was stated that as per the application, certain cash and ornaments were found missing from his Almirah. Later, he came to know that the complainant had enticed his son to remove ornaments and cash. It was further stated that the accused, being a drug addict, was admitted in de-addiction centre. Out of the said cash, a second hand Scooty was purchased. During investigation it transpired that ornaments were pledged. Further, that a *Panchayati* compromise was effected with regard to complaint of Buta Singh.

On the basis of the examination of Buta Singh, further cross- examination of the complainant and I.O. was sought.

Mr. Jimmy Singla, learned counsel for the petitioner contends that certain new facts came to light in deposition of Buta Singh, hence there was need to further cross-examine the complainant and I.O. The contention raised is that a lenient view should be taken while dealing with the application under Section 311 of Cr.P.C.

Ms. Monika Jalota, Deputy Advocate General, Punjab defends the impugned order. The contention is that there are no new facts calling for further cross-examination.

Section 311 of Cr.P.C. is reproduced 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.”

Section 311 empowers the Courts to re-call or re-examine the person, if evidence appears to be essential for just decision of the case.

The Supreme Court in ***Rajaram Prasad Yadav Versus State of Bihar and another, (2013) 14 SCC 461*** enunciated the principles to be considered while dealing with the applications under Section 311 of Cr.P.C. read with Section 138 of the Indian Evidence Act, 1872. The relevant portion is quoted below:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

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 Criminal Procedure Code

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 reexamine any such person.

d) The exercise of power under Section 311 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code 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."

In the case in hand, there were two separate incidents. A complaint made by Buta Singh on 1st February, 2020 that certain gold ornaments and ₹ 30,000/- cash were missing from his Almirah. The allegations were made against the complainant and the accused. The matter was compromised on 18th March, 2020.

From perusal of the compromise, it is evident that both the

accused and the complainant had pledged the ornaments with the goldsmith for ₹ 50,000/-. It was stated that Buta Singh will verify the gold set and same would be returned on payment of ₹ 50,000/- to the goldsmith. As per the compromise, the complainant and the accused will not talk to each other either verbally or telephonically.

The other incident dated 19th March, 2021 is relevant for the FIR in present case.

As per the case set up, the accused forcibly entered the house of the complainant, tried to molest her, inflicted injuries to the complainant and her mother-in-law.

The two incidents are independent of each other. The FIR in the present case is prior in time to the complaint made by the father of the accused. There is no co-relation between the two incidents.

From the cross-examination of the complainant and the I.O., it is forthcoming that the defence was trying to put forth case of false implication of the accused for extorting money or a chunk of land.

As per the complaint made by Buta Singh, his son who was a drug addict was enticed by complainant and he took away the cash and gold ornaments. Ultimately the matter was compromised. The contents of the compromise no way point towards connection between two incidents.

The contention of learned counsel for the petitioner that a lenient view should be taken while dealing with the applications Section 311 of Cr.P.C. is to be considered in view of principles

enunciated in *Rajaram Prasad Yadav's case (supra)*.

It is not a matter of routine that Court has to order re-examination of the witnesses. It is only to arrive at a just decision, the discretionary powers under Section 311 of Cr.P.C. are to be exercised judiciously.

The Courts are empowered to exercise discretion under Section 311 of Cr.P.C. where there are strong and valid reasons to conclude that re-examination or new evidence is needed for just decision of the case.

In the present case, petitioner has failed to co-relate the two incidents. Merely the deposition of Buta Singh about the complaint against the complainant and his son which was compromised, itself cannot be a ground for re-summoning of the complainant and I.O. for further cross-examination.

It would be apposite to note at this stage that while cross-examining the complainant, the suggestion regarding false implication was given to the complainant. There was no cross-examination of complainant indicating angle of extortion of money from the accused. It is worth noting that the complainant was cross-examined on 19th March, 2021 i.e. subsequent to the complaint moved by the father of the accused, meaning thereby the said fact was in knowledge of defence on 19th March, 2021.

No interference is called for in the impugned order as it is rightly held that there is no occasion to give further opportunity to

cross-examine the I.O. as he was cross-examined at length and in case defence failed to put certain questions, that in itself would not be a ground for recalling of the witnesses.

There is no illegality in the impugned order, the same is upheld and the petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

27th April, 2021
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |