

128

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

**CRM-M No.26862 of 2021
Date of Decision: 15.07.2021**

**SORANPetitioner
Vs
STATE OF HARYANARespondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Raman Chawla, Advocate
for the petitioner.

(Through video-conferencing)

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred the present petition under Section 482 Cr.P.C. for quashing of order dated 09.07.2021 (Annexure P-4) passed by the Addl. Sessions Judge, Bhiwani in FIR No.373 dated 20.12.2015 registered under Sections 302, 201, 364 and 120-B IPC at Police Station Civil Lines, Bhiwani.

[2]. Vide the aforesaid order, the application filed by the prosecution under Section 311 Cr.P.C. for placing on record certificate under Section 65-B(4) of the Evidence Act (hereinafter to be referred as 'the Act') issued by PW-14 ASI Kapoor Singh has been allowed.

[3]. It has been contended by the prosecution that PW-14 ASI Kapoor Singh was earlier examined on 21.03.2017 and the

certificate in question could not be placed on record through his statement. The case relates to circumstantial evidence wherein CCTV footage of the Hospital is necessary piece of evidence for which the witness has already tendered CD and the same has been exhibited as Ex.P-27. The CD being not a primary evidence under Section 62 of the Act and it being a secondary evidence, needs authentication by way of certification under Section 65-B(4) of the Act and, therefore, the certificate is a material piece of evidence which needs to be brought on record.

[4]. Learned counsel for the petitioner submitted that the prosecution cannot fill lacuna in the case at this stage, particularly when repeated applications under Section 311 Cr.P.C. were filed earlier. Firstly the application under Section 311 Cr.P.C. was filed by the prosecution for production of FSL report and the same was allowed by the trial Court and the FSL report came negative. The second application was filed by the prosecution for DNA profile and the same was allowed, but the petitioner has not laid any challenge to the said order. The third application was filed for production of some documents as additional evidence. The application was partly allowed vide order dated 17.08.2019, thereby summoning record of mobile phones mentioned in para no.3 of the application, summoning of record of FIR No.41 dated 09.02.2016 and Police Station, Civil

Lines, Bhiwani as mentioned in para no.5 of the application. The application was partly rejected thereby declining the prayer for summoning of admission and discharge record of Sh. Sugreev from Medi Home Hospital, Bhiwani. Qua the rejection part of the application, CRM-M No.38273 of 2019 is pending in the High Court. Evidently, the petitioner has not challenged the part of order vide which the application was partly allowed in the aforesaid manner. The fourth application is the present application in which the certificate under Section 65-B(4) of the Act is sought to be brought on record by way of further examination of PW-14 ASI Kapoor Singh.

[5]. Learned counsel for the petitioner further submitted that the impugned order was passed on 09.07.2021 and the witness has been examined on 12.07.2021. Learned counsel placed reliance upon **Crl. Appeal No.830 of 2013 (SLP (Crl.) No.2400 of 2011)** titled '**Rajaram Prasad Yadav vs. State of Bihar and another**', decided on 04.07.2013 by the Hon'ble Apex Court in support of his submissions.

[6]. At last, learned counsel further submitted that on 15.07.2021 itself, the prosecution has filed an application under Section 173(8) Cr.P.C. in the Court for further investigation in the present case, but the order passed therein could not be ascertained by the petitioner due to paucity of time.

[7]. I have heard learned counsel for the petitioner at length.

[8]. Perusal of order dated 12.07.2021 passed by the Addl. Sessions Judge, Bhiwani would show that PW-14 EASI Kapoor Singh has been examined after recalling, who has tendered certificate under Section 65-B of the Act as Ex.P-69. He has authenticated the certificate by deposing that the same carries his signatures. Opportunity was given to the defence counsel. Evidently, defence counsel has cross-examined the witness thereby acquiescing the tender made by the witness. In view of cross-examination done by the defence counsel, it cannot be said that no opportunity was given to the petitioner to question the authenticity of the certificate.

[9]. In view of the cross-examination done after tendering of document, the Court would adjudge the legality and validity of certificate at the time of adjudication. While deciding **Rajaram Prasad Yadav**'s case (supra), the Hon'ble Apex Court laid down the principles which will have to be borne in mind while dealing with the application under Section 311 Cr.P.C. The same read as under:-

“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.”

[10]. It is a settled principle of law that a procedural law is meant to prevent failure of justice on account of mistake of either of the party to bring on record valuable evidence. It is not only the prerogative of the Court, but also a duty to examine such a witness as it considers necessary for doing justice between the parties. The consideration before the Court is to visualize as a determinative factor that whether the evidence in question is essential for just decision of the case or not. Reference can also be made to **Hanuman Ram vs. State of Rajasthan and ors., AIR 2009 SC 69**. The Court has wide powers in the matter as enshrined in Section 311 Cr.P.C., however those powers can be exercised judiciously only, as observed in **Rajaram Prasad Yadav's** case (supra).

[11]. It is also a well settled principle of law that a trial cannot be held up on objection at the time of tendering of documents in evidence. Such a practice would be archaic practice as held in **Bipan Shantilal Panchal vs State of Gujarat, 2001(1) R.C.R.**

(Crl.) 859.

[12]. The document Ex.P-27 had already been exhibited in the statement of PW-14 ASI Kapoor Singh at the time of production of certificate under Section 65-B of the Act. Reasonable opportunity has been given to the defence counsel to examine the witness. Having acquiesced the opportunity by cross-examining the witness on 12.07.2021, the petitioner cannot turn around and object to the tender made by the witness. The application under Section 173(8) Cr.P.C. filed by the prosecution would be decided by the Court in accordance with law. In any case, the trial of the case cannot be put on hold on the basis of challenge made in the present petition.

[13]. For the reasons recorded hereinabove, I find no justification to interfere in the impugned order. The present petition is accordingly dismissed.

July 15, 2021

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No