

226.

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

CRM-M-27315-2021

Date of Decision: 02.08.2021

Manjit Kaur @ Daizy

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Naveen Bawa, Advocate,
for the petitioner.

Mr. Manreet Singh Nagra, A.A.G., Punjab.

Mr. S.P.S. Aulakh, Advocate,
for the complainant.

RAJESH BHARDWAJ.J

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The instant petition has been filed under Section 482 Cr.P.C. praying for quashing of the order dated 08.03.2021 passed by the learned Additional Sessions Judge, Ludhiana, wherein the application filed under Section 311 Cr.P.C. for recalling the complainant PW1-Ajay Kumar and the prosecutrix for the purpose of cross-examination on behalf of the petitioner-accused, has been declined.

Vide order dated 19.07.2021, this Court issued notice of motion directing the petitioner to pay litigation expenses of Rs.25,000/- to respondents No.2 and 3.

Learned counsel for the petitioner has submitted that pursuant to the order dated 19.07.2021, petitioner has already made payment of Rs.25,000/-. It has been contended that the learned Additional Sessions Judge has illegally declined the prayer made by the petitioner-accused as recalling and re-examination of both these witnesses are essential for the just decision of the case. It has been further contended that the earlier counsel had not cross-examined both these witnesses on the ground of handwriting of the prosecutrix as well as the admissibility of the photographs of the prosecutrix with the juvenile and it is because of that reason, the petitioner engaged another counsel, who although did not doubt the integrity of the earlier counsel, however, it will be in the interest of justice that both these witnesses be recalled for further examination. The petitioner is facing trial for the serious offences and thus, in view of the catena of judgments of the Hon'ble Apex Court, the learned trial Court should have appreciated the plea of the petitioner liberally by granting him one more opportunity.

I have heard counsel for the parties and perused the record.

A bare perusal of Section 311 of Cr.P.C. would show that the court has been provided with ample power for summoning any person as a witness at any stage of any inquiry, trial or other proceeding if the same appears to the court to be essential for the just decision of the case. The proposition in hand has been appreciated by the Hon'ble Apex Court in one case titled as ***P. Sanjeeva Rao Versus State of Andhra Pradesh-(2012) 7***

Supreme Court Cases 56 wherein their Lordships have observed in paras 19 and 20 as under:-

“19. The nature and extent of the power vested in the courts under Section 311 CrPC to recall witnesses was examined by this Court in Hanuman Ram vs. State of Rajasthan & Ors. (2008) 15 SCC 652. This Court held that the object underlying Section 311 was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses. This Court observed: (SCC p.654, para 7)

“7. ... '26. ... This is a supplementary provision enabling, and in certain circumstances imposing on the court, the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the

case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind." (emphasis supplied)

20. *Grant of fairest opportunity to the accused to prove his innocence is the object of every fair trial, observed this Court in Hoffman Andreas v. Inspector of Customs (2000) 10 SCC 430. The following passage is in this regard apposite:*

"In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible." (emphasis supplied)"

Applying the ratio laid down above to the facts and circumstances of the present case, this Court is of the opinion that the

observation made above is under the compelling circumstances where the

present petitioner is facing the charges for the heinous offences, she had engaged a new counsel. The journey of the criminal trial is to find the truth and in pursuit of the same if any party wants to bring on record some material evidence, then the court should exercise its powers under Section 311 Cr.P.C. by allowing the summoning under Section 311 Cr.P.C., as prayed by the petitioner.

In the facts and circumstances of the present case, this Court is of the opinion that the impugned order dated 08.03.2021 deserves to be set aside and the application filed by the petitioner under Section 311 Cr.P.C. is accordingly allowed for summoning the two witnesses, as prayed for, i.e. the complainant and the prosecutrix for further examination.

It is being made clear that the learned trial Court would fix a date of its convenience by granting one more opportunity to the petitioner for the re-examination of these witnesses. However, the learned trial Court is at liberty to ensure that the petitioner does not misuse the concession of this order by delaying the trial.

Petition is disposed of in the above terms.

(RAJESH BHARDWAJ)
JUDGE

02.08.2021

lucky/sanjeev

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