

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(Heard through VC)**

**CRM-M-987 of 2018 (O&M)
Date of Decision: 1.9.2021**

Ashok Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Manish Soni, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana.

Mr. Abhimanyu Singh, Advocate,
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

The instant petition has been filed with a limited prayer to permit the petitioner/complainant to lead additional evidence under Section 311 of the Code of Criminal Procedure, by summoning Inquiry Officer Anil Kumar, ACP, Sadar, Gurugram along with the record of the inquiry proceedings in respect of the Investigating Officer namely, ASI Shri Bhagwan who was held guilty for not conducting a fair and proper investigation in the present FIR No. 48 dated 7.2.2016 registered under Sections 363, 366, 302 and 201 IPC at Police Station Pataudi, District Gurugram, at the instance of the petitioner.

Learned counsel for the petitioner herein assails the order dated 21.12.2017 whereby the application moved by complainant—Ashok Kumar duly forwarded by the State counsel, for summoning the record of the inquiry conducted by ACP Anil Kumar with respect to the complaint made against ASI Shri Bhagwan, has been declined. Learned counsel for the petitioner herein contends that the complaint has been made against said ASI Shri Bhagwan regarding ineffective investigation which resulted in

changing the very complexion of the case.

It is further argued that the application filed under Section 311 Cr.P.C. was dismissed on the ground that there was no case made out for recalling the witness, whereas the application that had been filed was for leading additional evidence which can be allowed at any stage of the trial as stipulated under Section 311 Cr.P.C. It is contended that the Additional Sessions Judge, Gurugram while passing the impugned order misread the entire import of the application.

Notice of motion was issued, pursuant to which, appearance has been caused on behalf of respondent No.2/accused and the State.

At the very outset, learned counsel for the respondent—State and the accused would submit that there is no infirmity in the order so passed and in fact the said application was filed only to delay the trial as the respondent No.2 is in custody. Learned State counsel herein also contends that this is not the first application that had been filed under Section 311 Cr.P.C.

I have heard learned counsel for both the parties and perused the application which is filed for leading additional evidence that can be led at “any stage” as enumerated under Section 311 Cr.P.C. The law is well settled in this regard as held in the case **Rajendra Prasad Vs. Narcotic Cell, Delhi 1999 (3) RCR (Criminal) 440** and **State of Haryana Versus Ram Mehar and others Etc. Etc. (2016) 8 S.C.C. 762.**

A perusal of the application filed would reflect that a request had been made for leading additional evidence, whereas the trial court has dismissed the said application by treating it as an application filed to recall the witness already examined, which order would not be sustainable.

Therefore, the instant petition is allowed. The impugned order passed by the Additional Sessions Judge, Gurugram is set aside and the application under Section 311 Cr.P.C. filed by the complainant—petitioner herein is allowed with a direction to allow the petitioner two effective opportunities to lead additional evidence as prayed.

This Court is informed that the case is listed on 8.9.2021. Let the parties to appear on the date so fixed before the trial court.

Let an endeavour be made by the trial Court to conclude the trial as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

1.9.2021

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**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned :	Yes
Whether Reportable :	No