

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

**CRR-1084-2021 (O&M)
Date of decision : 28.09.2021**

Sudesh

..... Petitioner

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Balkar Singh, Advocate
for the petitioner.

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.

This revision petition has been filed by the petitioner impugning the order dated 26.08.2021 passed by the learned Additional Sessions Judge, Yamuna Nagar at Jagadhri.

It has been contended by learned counsel for the petitioner that petitioner is the complainant in FIR No.18 dated 23.01.2019, under Sections 376, 452 and 506 IPC, Police Station Women Police Station, Yamuna Nagar, District Yamuna Nagar. He contends that after the investigation, challan was presented, charges were framed and thereafter, the trial Court started examining the witnesses. He would submit that on conclusion of the prosecution witness when the defence started producing its defence it produced Ex.D-15 to prove that on the day of occurrence, accused was on his duty and thus, was not present at the scene of occurrence as alleged by the prosecutrix. In order to rebut the evidence

produced by the accused, the prosecution filed the application under Section 311 and Section 91 Cr.P.C. for allowing to lead additional evidence. He contends that learned trial Court illegally declined the same by ignoring the statutory provisions of Section 311 Cr.P.C. He would submit that the Hon'ble Supreme Court in various judgments has held that the discretionary powers like those under Section 311 Cr.P.C. are essentially intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity insofar as the evidence is concerned as also to ensure that no prejudice is caused to anyone. He would submit that the power has been granted to the Courts which can be invoked at any stage of the trial. He submits that the summoning of the proposed witnesses was essential for the just decision of the case and hence, declining the application is totally unsustainable in the eyes of law.

I have heard learned counsel for the petitioner and perused the record.

It is evident that the case in hand pertained to the offence under Sections 376 and 452 IPC. The prosecutrix had alleged that the offence of rape is committed by the petitioner. The prosecution has already examined all the witnesses and the trial is at the stage of examination of the defence witnesses. The prosecution has filed the present application under Section 311 Cr.P.C. for summoning the witness namely, Kirti Bhushan and producing on record one pendrive. It was expected from the prosecution that all the essential evidence required to prove its case was to be led at the relevant time. The filing of the present application has been shown to be essential on the ground that the defence

evidence is to be rebutted. The plea of the prosecution that the evidence led by the defence is forged and fabricated would be seen at the time of its admissibility as observed by the trial Court also. No doubt, that the power granted to the Court under Section 311 Cr.P.C. are wider enough and in plethora of judgments, the Hon'ble Supreme Court has held that the same be used judiciously if the same is essential for the just decision of the case. The facts and circumstances of the present case would show that the prosecution has chosen to summon the proposed witness at a stage when the trial is on the verge of its culmination. It is a settled principle of law that the power under Section 311 Cr.P.C. cannot be used to fill up the lacuna. The conduct of the prosecution would show that the witness and the photographs proposed to be produced would amount to filling up the lacuna in the prosecution evidence. In the overall facts and circumstances of the case, the filing of application under Section 311 Cr.P.C. when tested on the anvil of the judicial precedents would fail to qualify the test laid down and would unnecessarily prolong the trial. Resultantly, this Court is of the opinion that there is no infirmity in the view taken by the learned trial Court while declining the plea of the prosecution to allow the application under Section 311 Cr.P.C.

Petition being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

28.09.2021
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No