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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-52048-2021

Date of Decision: December 14, 2021

Satish Nayyar

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Sandeep Sharma, Advocate for the petitioner.

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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.

Instant petition has been filed for quashing of impugned order dated 17.11.2021 passed by learned Additional Sessions Judge, Jalandhar, vide which the application filed by the petitioner for recalling the witness PW1-Mamta wife of Vijay Kumar (wrongly mentioned as PW-5) for cross examination has been dismissed.

As per the factual matrix of the case, the FIR was lodged on the statement of Mamta wife of Vijay Kumar. It was alleged that she is 26 years of age and is doing the house-hold work. On 29.01.2018 at about 11.00/12.00 p.m. her father-in-law Satish Nayyar said to her mother-in-law Kamlesh Nayyar to go to the house of her daughter Anuradha in order to meet her and on the saying of her father-in-law, her mother-in-law, after taking her elder son Rudav alongwith with her, gone to the house of her

sister-in-law at Kamal Vihar. Her father-in-law came to her in her room and said that if she has to live there then she will have to admit his saying. Her father-in-law threatened her and asked her to have intimate relationship with him. Due to the threat given by the father-in-law she submitted herself to his illegal demand. Thereafter she told her husband about it but even he did not hear her. The FIR was lodged to take the legal action against her father-in-law. The Investigation commenced and the challan was presented. The trial Court took cognizance of the case. During the trial the complainant was examined as PW-1. The accused filed an application for recalling PW-1 Mamta wife of Vijay Kumar for further cross-examination. The trial court heard both the sides and after hearing, dismissed the same vide its order dated 17.11.2021. Aggrieved by the same, the petitioner has approached this Court for quashing of the order dated 17.11.2021.

Counsel for the petitioner submits that the petitioner has engaged another counsel who found that the earlier counsel had not put certain questions to the complainant, which were material questions and hence, PW-1 Mamta should be recalled for putting those questions to her. He submits that statutory provisions of Section 311 Cr.P.C. can be invoked at any stage of the trial to meet the ends of justice. He has submitted that the trial Court has failed to take a judicious note of the same and has illegally declined the prayer made by the petitioner.

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

It is apparent from the record that the investigation was duly conducted and the challan was presented. The complainant has been examined and cross-examined at length. The emphasis of the petitioner-

accused for recalling PW-1 Mamta is that there is a change of counsel who finds that some questions have not been put to the complainant which were material in nature. However, there is no gain saying that the complainant has been examined and enough opportunities have been given to the accused for cross-examining the complainant. It is settled proposition of law that statutory provisions of Section 311 Cr.P.C. are liberal in nature, however, neither the discretion under Section 311 Cr.P.C. can be exercised to delay the trial nor to fill up the lacunas in the case. Reliance is placed on V.N.Patil vs K.Niranjan Kumar and others, passed in SLP(Crl.)No.8965 of 2018 on 04.03.2021, relevant para of which reads thus:

“15. The object underlying Section 311 Cr.P.C. 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 significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 Cr.P.C. has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercise of judicious discretion.”

The facts and circumstances of the present case would clearly indicate that the application preferred by the accused is only in order to prolong the trial and not for meeting the ends of justice. Learned trial Court appreciated the arguments raised by the petitioner and observed that the complainant had been examined in detail and the only ground for recalling is the change of counsel. I am of the opinion that the learned trial Court has committed no illegality in drawing its conclusion for dismissing the same.

Resultantly, the petition being devoid of any merit is hereby dismissed.

December 14, 2021
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |