

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M No.1694 of 2019

Date of Decision : September 19, 2022

Amit Petitioner

vs.

State of Haryana and another Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR.

* * *

Present : Mr. Rishabh Chaudhary, Advocate
for the petitioner.

Mr. N. K. Poswal, AAG, Haryana.

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NAMIT KUMAR, J. (Oral) :

The instant petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing the order dated 29.11.2018 (Annexure P-5) passed by the Court of learned Additional Sessions Judge, Panipat, whereby the petitioner's application seeking permission to recall PW-1 Gurcharan Singh, District Drug Control Officer, for further cross-examination, has been rejected.

The brief facts of the case are that respondent no.2 filed complaint under Sections 27(b)(ii), 28 and 28-B of Drugs and Cosmetic Act, 1940 against the petitioner and one Naresh Kumar. In the complaint, respondent no.2 alleged that the petitioner was operating illegal business of medicine from the premises of Naresh Kumar, who is owner of Naresh Tyre Puncture Shop, adjacent to the shop of petitioner. On 22.02.2014, the complainant searched and inspected the shop of Naresh Kumar and found

restricted drugs and the same were seized.

The case was fixed for prosecution evidence and Gurcharan Singh, District Drug Control Officer was examined as PW-1 and the prosecution evidence was concluded. Thereafter, the statement of the petitioner and Naresh Kumar were recorded under Section 313 Cr.P.C.

Thereafter, an application dated 22.11.2018 under Section 311 Cr.P.C. for summoning and recalling PW-1 Gurcharan Singh, District Drug Control Officer, for further cross-examination was filed by the petitioner. In para 2 of the application, the petitioner submitted that PW-1 Gurcharan Singh, District Drug Control Officer is the star witness of the prosecution and during his examination-in-chief, he exhibited 24 documents but the earlier counsel engaged by the applicant/accused, had not put a single question to him relating to any of the documents exhibited/tendered by PW-1 and no material and relevant questions were put relating to alleged raid and recovery from this witness by the earlier defence counsel and since, now the accused-applicant has engaged a new counsel, considering the shortcomings of the earlier counsel, PW-1 Gurcharan Singh may kindly be recalled for further cross-examination.

The aforesaid application was contested by the respondents by filing a detailed reply, wherein it was stated that the applicant/accused has availed sufficient opportunity to cross-examine PW-1 Gurcharan Singh and he was cross-examined by the defence counsel thoroughly in the presence of applicant/accused and all relevant questions were put to the witness and the intention of filing the application is only to delay the matter.

The said application was dismissed by the Court of learned

Additional Sessions Judge, Panipat, vide order dated 29.11.2018.

Therefore, the petitioner has filed the instant petition.

Learned counsel for the petitioner has argued that PW-1 Gurcharan Singh is the star witness of the prosecution and his earlier counsel did not cross-examine him properly and therefore, after engaging a new counsel, the said application under Section 311 Cr.P.C. was filed which has wrongly been dismissed by the learned Trial Court.

Per contra, learned counsel for the respondent-State has argued that the application under Section 311 Cr.P.C. filed by the petitioner was to delay the proceedings and to fill the lacuna. The examination and cross-examination of the said witness was conducted in the presence of the counsel for the petitioner and therefore, the said application has rightly been rejected by the learned Trial Court.

Section 311 Cr.P.C. reads as under :-

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

The Hon'ble Supreme Court, while interpreting the said provisions in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation** reported as **2019 (14) SCC 328** has held as under :-

“10. The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under [Section 311](#) should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

The Hon'ble Supreme Court, in another decision, while interpreting the provisions of Section 311 in the case of **Rajaram Prasad Yadav vs. State of Bihar and another** reported as **2013(3) RCR**

(Criminal) 726 has held as under :-

“3. By a short order dated 18.11.09, passed in Sessions Trial No. 425 of 2009, the trial Court disallowed the applications of the Respondents filed under [Section 311](#) of the Code of Criminal Procedure (Cr.P.C.), to re-examine PW-9, the informant. The High Court directed the trial Court to allow the 2nd Respondent to examine himself as a witness on a specified date by its order dated 9.12.2010.

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23. From a conspectus consideration of the above decisions, while dealing with an application under [Section 311](#) Cr.P.C. read along with [Section 138](#) of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

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.

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30. *In the light of the above conclusion, applying the various principles set out above, we are convinced that the order of the trial Court impugned before the High Court did not call for any interference in any event behind the back of the appellant herein. The appeal, therefore, succeeds. The order impugned dated 9.12.2010, passed in Crl. M.P. 12454/2010 of the High Court is set aside. The order of the trial Court stands restored. The trial Court shall proceed with the*

trial. The stay granted by this Court in the order dated 7.3.2011, stands vacated. The trial Court shall proceed with the trial from the stage it was left and conclude the same expeditiously, preferably within three months from the date of receipt of the copy of this order.”

Keeping in view the above principles, when the application filed by the petitioner was examined, the substantive reason given for recalling Gurcharan Singh, a District Drug Control Officer (PW-1) was that the earlier defence counsel could not cross-examine him properly and new counsel has been engaged and therefore, the said witness is to be re-examined. For the said reason, the provisions of Section 311 Cr.P.C. cannot be invoked and therefore, the application filed by the petitioner under Section 311 Cr.P.C. has rightly been dismissed vide order dated 29.11.2018, passed by the Court of learned Additional Sessions Judge, Panipat.

Accordingly, finding no merit in the instant petition, the same is hereby dismissed.

September 19, 2022
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(NAMIT KUMAR)
JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>