

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

CRM-M-7971-2020 (O&M)

Date of Decision: 28.9.2022

Rimpy Marwaha

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Nakul Sharma, Advocate for
Mr. M.S. Sachdev, Advocate, for the petitioner.
Mr. Sandeep Kumar, Deputy Advocate General, Punjab.
Mr. Mandeep Kaushik, Advocate, for respondent No.2.

Rajesh Bhardwaj, J.

CRM-35750-2022

For the reasons mentioned in the application, the same is allowed. The date of hearing in the main case is pre-poned for today. The case is taken up on board for hearing today itself.

Main case

The petitioner has approached this Court by way of filing the present petition under Section 482 Cr.P.C. for quashing of order dated 26.9.2019, whereby, the evidence of the prosecution has been closed by order and further for quashing of order dated 3.2.2020, whereby, the application under Section 311 Cr.P.C. for recalling the witness has been declined.

As per facts of the case, FIR No.7, dated 11.1.2014, under Sections 498-A, 406 IPC at Police Station Samrala, District Ludhiana, was registered against the accused. After the investigation, the challan was presented and the trial commenced. However, the evidence of the prosecution was closed by order dated 26.9.2019 and thereafter, an

application under Section 311 Cr.P.C. filed by the petitioner, was also declined by the learned trial Court vide order dated 3.2.2020. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

It has been contended by learned counsel for the petitioner that the learned trial Court has fallen in error in declining the application filed by the petitioner for recalling the witness under Section 311 Cr.P.C. He has submitted that the evidence of the prosecution was closed by the trial Court on flimsy grounds and the petitioner would not be held accountable for the same. He has submitted that declining the application by observing that 17 opportunities had been granted to the prosecution, is against the record of the case. He has submitted that the petitioner and her father are layman and being not aware of the intricacies of the law, they could not be examined in the presence of their counsel. He submits that the provisions of Section 311 Cr.P.C. are sacrosanct and liberal in nature and can be invoked before the pronouncement of final judgment and the Court should invoke its jurisdiction, if the same is necessary for the just decision of the case. He has submitted that the petitioner has not caused any delay in the on going trial, thus, dismissal of the application filed under Section 311 Cr.P.C. is totally unsustainable in the eyes of law.

Heard.

Admittedly, the FIR in question was lodged on 11.1.2014. After lodging of the FIR, investigation had been completed and the charges were framed. It is apparent from the perusal of the record that the trial Court granted almost 17 opportunities to the prosecution for concluding its evidence. The summons were served even through SSP and despite that the

witnesses were not examined. Finally the Court closed the prosecution evidence vide order dated 26.9.2019. Evidently, the same was never assailed by the petitioner, which is observed by the trial Court as well. However, thereafter, application under Section 311 Cr.P.C. was filed for recalling the witnesses. There is no gainsaying that the power under Section 311 Cr.P.C. is there in order to prevent miscarriage of justice. For the decision of the issue involved, the provisions of Section 311 Cr.P.C. is necessary which read as under:-

“311. Power to summon material witnesses, 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.”

From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328 held as under:-

“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 re-examination 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 provisions of Section 311 Cr.P.C. can be invoked when it is necessary for the just decision of the case, however, the same cannot be invoked for filling up the loopholes in the case and to delay the trial. The Court is to invoke the power under Section 311 Cr.P.C. with circumspect. Though the provisions of Section 311 can be invoked at any time before the pronouncement of final judgment but the Court is to be conscious enough to see whether the application has been filed with a deliberate attempt to delay the trial. The provisions of Section 311 Cr.P.C. are sacrosanct and liberal in nature, however, Hon'ble the Supreme Court has time and again laid down that the provisions of Section 311 Cr.P.C. are discretionary in nature.

The case in hand is glaring example, where for one reason or the other, the trial has been delayed by the petitioner. The order dated 26.9.2019 by virtue of which the evidence of the prosecution closed, was not assailed, however, an attempt was made to review the same by filing application under Section 311 Cr.P.C. Thus, weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the view taken by the learned trial Court. Resultantly, the petition being devoid of any merit is hereby dismissed.

28.9.2022
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No