

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

201

**CRM-M-12425-2017
Date of decision: 20.04.2022**

KARAN SINGH

... Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Jai Singh Yadav, Advocate for the petitioner.

Mr. Ashish Yadav, Additional, A.G. Haryana.

Mr. G.S. Sullar, Advocate for respondent No.2.

VINOD S. BHARDWAJ. J.(Oral)

1. The present petition has been filed under Section 482 Cr.P.C. raising a challenge to the judgment dated 15.03.2017 passed by the Sessions Judge, Rewari whereby a revision petition preferred by the respondent-complainant against the order dated 12.12.2016 closing the evidence of the prosecution along with order dated 31.01.2017 passed by the Judicial Magistrate First Class, Rewari on an application under Section 311 Cr.P.C. was allowed and the order of the Judicial Magistrate First Class was set aside.

2. Learned counsel appearing on behalf of the petitioner has submitted that the FIR in question had been registered against the petitioner and co-accused on the basis of a statement made by the respondent. Upon conclusion of the investigation, the charge was filed wherein the respondent No.3-Kabir was found to be innocent. It is stated that a total of 07 witnesses had been mentioned in the final report, however, the respondents failed to

conclude their witnesses and evidence as a result whereof, trial Court closed the prosecution evidence by order on 12.12.2016. It was categorically recorded in the said order that neither the complainant nor the accused counsel want to re-examine the witnesses. No other opportunity was required to be extended to the prosecution as enough opportunities had been granted and the trial Court directed evidence of the prosecution to be closed vide order dated 12.12.2016. Thereafter, the complainant moved an application under Section 311 Cr.P.C. on 11.01.2017 with a prayer that out of the 07 witnesses, 06 witnesses had been examined and that the material witness namely Dr. Yogesh who was required to be examined was not traceable and therefore, the Record Keeper of the Trauma Centre, Rewari, namely Dr. R.B. Yadav, Medical Officer, may be called upon as an additional witness to prove the said MLR and X-ray reports. The said application was dismissed by the Trial Court vide order dated 31.01.2017. The revision petition was preferred against the said order before the Court of Sessions Judge, Rewari and the same has been allowed vide impugned judgment dated 15.03.2017. Hence, the present petition.

4. Learned counsel appearing on behalf of the petitioner has assailed the said order on the ground that this is an attempt to delay the proceedings. It is further argued that once the closure of the prosecution evidence was directed with the consent of the parties the same could not have been re-opened. He further submits that under the garb of an application under Section 311 Cr.P.C., the respondent prosecution wants to re-open the examination of the witnesses and to conduct the trial *de novo*. A reference is also made to the judgment of this Court in the matter of “*State of Haryana versus Cheeka Cooperative Credit Service Society and others*” reported as 1992 (1) R.C.R. (Criminal) 294 to contend that an order passed

on an application under Section 311 Cr.P.C. is an interlocutory order and as such a revision against the said order would be barred under Section 397 (2) Cr.P.C. He thus contends that the Sessions Judge, Rewari has exercised a jurisdiction which is not vested in it and thus, prays that the judgment of Sessions Judge being without jurisdiction is bad and liable to be set aside.

5. Learned counsel appearing on behalf of the State and assisted by the Mr. G.S. Sullar, Advocate have submitted that there is no error in the judgment passed by the Sessions Judge and that a detailed reasoning has been given by the learned Sessions Judge while allowing the revision petition preferred by the respondent-complainant.

6. I have heard learned counsel for the parties. It is evident that from perusal of the file that the charge sheet in question was filed only against respondent Karan Singh on 21.05.2014 and he was put on trial. After examination of certain prosecution witnesses and the police officials, an application under Section 319 Cr.P.C. for summoning the respondent No.3 Kabir as an additional accused was moved on 16.11.2015. Upon consideration of the evidence brought before the Court and finding a prima facie case against the said respondent, the application under Section 319 Cr.P.C. was allowed and respondent No.3 Kabir was ordered to be served to be summoned vide order dated 16.03.2016. The relevant provision of Section 319 (4) of the Cr.P.C is extracted as under:

Section 319 in The Code Of Criminal Procedure, 1973

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the

accused, the Court may proceed against such person for the offence which he appears to have committed.

Xx xx xxx xx xx xx
Xx xx xx xx xx xx

(4) Where the Court proceeds against any person under sub- section (1), then-
(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

7. A perusal of the same would show that once an additional accused is summoned by the Court, it is required of the Court to frame a charge against the person so summoned and also to modify the charge against the accused who was already facing the trial and a joint charge sheet with the aid of Section 34 Cr.P.C. has to be framed. Upon framing of the charge against the accused summoned as an additional accused and upon framing of additional charge against the accused already facing trial, the Trial Court was required to deal with all the witnesses already examined prior to summoning of additional accused and to afford an opportunity to the additional accused as well as the accused already facing a trial to cross-examine the said witness on the charge framed/additionally framed. It is evident that no such process was followed by the trial Court. Further, a perusal of the order dated 12.12.2016 also shows that the Sub Divisional Judicial Magistrate, Khosli has purportedly noted that learned counsel for the accused Karan and accused Kabir submitted that they do not want to cross-examine any witness who has already been examined. A statement of the counsel for the complainant was recorded to the effect that he does not want to examine any witness who have been examined before moving of an application under Section 319 Cr.P.C.

8. It is significant to point out that the trial is steered by the State.

The decision to examine witness, if any has to be taken by the Public Prosecutor. Learned trial Court was clearly in an error in taking a decision by merely placing a reliance on the statement of counsel for the complainant and disregarding that there was no consent to the course of action by the Public Prosecutor. Besides, modus operandi so adopted by the learned trial Court is clearly in violation of the procedure prescribed under the Code of Criminal Procedure. An accused is required to be confronted with the evidence and has to be accorded an opportunity to cross-examine the witnesses. An evidence recorded in the absence of an accused cannot be read against him and such an evidence is clearly not admissible against the said accused in law. It is undoubtedly evident that the procedure requirement as contemplated under the law was grossly disregarded by the Sub Divisional Judicial Magistrate, Khosli.

9. Now advertent to the legal submission made by the counsel for the petitioner that the order passed under Section 311 Cr.P.C. being an interlocutory order was barred by Section 397 (2) Cr.P.C. and the reliance placed on the judgment of *State of Haryana versus Cheeka Cooperative Credit Service Society and others (supra)* is concerned, it is essentially noticed that the revision in the instant case has been preferred against two orders dated 12.12.2016 as well as the order of 31.01.2017 whereby the application was dismissed under Section 311 Cr.P.C. It cannot thus be permitted as simplicitor revision petition against the order passed on an application under Section 311 Cr.P.C., rather, it was also a revision petition against the order wherein the prosecution evidence was ordered to be closed. Such an order is a final order sealing the rights of the prosecution to lead evidence and hence, being a final order, it was subject to the revision jurisdiction of the Court. The order passed on an application under Section

311 Cr.P.C. is only a consequential order.

10. I have considered the submission of learned counsel appearing on behalf of the petitioner with respect to the necessity to examine Dr. R.B. Yadav. It is specifically noticed by the Courts below that the original signatory to the MLR and X-ray report namely Dr. Yogesh is not traceable and that in his place the Medical Officer was sought to be called by the prosecution to examine the said medical record. As the case pertains to the injury and the medical report needs to be necessarily established in order to claim of the guilt of the person facing trial, this Court being seized of the powers under Section 482 Cr.P.C. has to ensure that the procedure of law does not scuttle the ends of justice. Hence, while being seized of the issue as regards examination of the doctor to prove the medical record, I invoke the powers vested in this Court under Section 482 Cr.P.C. and allow the examination of Dr. R.B. Yadav to secure ends of justice.

The petition is accordingly dismissed. The order passed by the Sessions Judge, Rewari is confirmed.

(VINOD S. BHARDWAJ)
JUDGE

APRIL 20, 2022

Vishal Sharma

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No