

126 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-14140-2022

Date of decision : 07.04.2022

Baljinder Singh @ Gogi

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. P.S.Ahluwalia, Advocate and
Mr. Jagat Vir Singh Dhindsa, Advocate for the petitioner.

MANOJ BAJAJ, J.

Baljinder Singh @ Gogi-accused has preferred this petition under Section 482 Cr.P.C to challenge the order dated 08.03.2022 passed by Additional Sessions Judge, Ludhiana, whereby his application dated 30.11.2021 filed under Section 311 Cr.P.C for recalling prosecution witness PW-2, namely, Jaspal Singh for further cross examination was dismissed.

The facts in brief leading to the petition are that on the basis of complaint given by Jaspal Singh relating to death of Gurvinder Singh @ Bunty, a case FIR No.122 dated 10.06.2012 under Sections 302, 307, 420, 467, 468, 427, 471, 148, 506 and 149 Indian Penal Code, 1860 and Sections 25 and 27 Arms Act, 1959 was registered at Police Station Salem Tabri, Ludhiana. The FIR is annexure P-1 and allegations contained in the same read as under:-

“It is stated that I am a resident of the aforesaid address and do the work of agriculture and Gurvinder Singh alias Viti son of Kuldeep singh who is the son of my uncle (chacha) in relations. Today time at about 1:30 PM, I alongwith brother in relations Gurvinder Singh alias Viti and our relatives Balkar Singh son of Khehar Singh resident of Bahadarke Road Ludiana, while riding in our car bolero no. PB-10-DL-

9798 (Temp) were about to cross from Bahadarke towards Karabara Baazigar Basti then from the front side one car marka Endeavour No. PB-49-1 colour White and behind it one more car which was marka Pajero. From the Endeavour car Karanvir Singh son of Gurdev Singh, Gurdev Singh @ Deb son of Aasa Singh, Baljinder Singh @ Gogi son of Nirmal Singh, Davinder Singh @ Gogi Son of Pritam Singh caste Jatt residents of Pimad Bahadarke and Vicky Sekhon resident of Salem Tabri came out of the car wherein Karanvir was having pistol/ revolver, Davinder Singh @Gogi was having pistol/ revolver and Baljinder Singh @Gogi was having pistol/ revolver and Vicky Sekhon was having baseball. The passage being narrow, our car was stopped. They on coming, Vicky Sekhon gave a baseball blow on the windscreen of our car and with it Gurdev Singh alias Deb raised a lalkara that son today Baunti should not be allowed to go dry, they are to be finished. Vicky Sekhon again gave a baseball blow on the windscreen. I and Balkar Singh came out and tried to explain them but Davinder Singh alias Gogi fired with the weapon held in his hand and simultaneously raised a lalkara that Bunty will not be left alive. I do not know if the fire done by Gogi had hit the wall or was fired in air. Then Karanvir and Baljinder Gogi dragged out Bunty from the car. Karanvir shot a bullet in the vakhi of Bunty with his pistol or revolver. Bunty immediately fell down on the ground. Thereafter, we raised the noise of Marta Marta then the days of elections being close, the booths of parties were present and many people came towards us. Because of our noise and on seeing the people coming, they while firing in the air and their other accomplices while hitting their dandas and sticks on the glasses of cars escaped from the spot. This entire incidence was witnessed by me and Balkar Singh with our eyes. The reason of enmity is that about one year back, Karanvir Singh son of Gurdev Singh alias Debu came to the house of Devinder Singh Nambardar alias Gogi and did a murderous attack on him and had fired bullet. Upon which, FIR No. 105 w/s 307-450-148-149-IPC 25-27-54-59-A Act dated 21-07-11 was registered at PS Laduwal against Karanvir Singh and Gurdev Singh alongwith 5/6 persons. In that FIR Gurwinder Singh alias Bunty used to help Davinder Singh alias Gogi and used to follow up the case. But Davinder Singh. Gogi due to intervention of relatives, had solely compromised the matter with Karanvir Singh and Gurdev singh Debu. Whereas Gurwinder Singh alias Bunty was against this compromise. Thereafter, Davinder Singh alias Gogi started having enmity with Gurvinder Singh Bunty because of the aforesaid matter. Baljinder Singh Gogi was a

part of this compromise. Thereafter, because of this matter and also other matters Baljinder Singh Gogi had enmity with Bunty and tried to cause harm to his life. Today on finding an occasion all the aforesaid in connivance with each shot Gurvinder Singh @Bunty at his house and tried to kill him.”

Upon registration of case, the investigation was conducted and after it's completion the accused were sent to face trial through final report under Section 173 Cr. P.C and as the offences were triable by Court of Sessions, the case was committed to the said court. After framing of charges by the Court of Sessions, the trial progressed against various accused persons and prosecution examined complainant Jaspal Singh as PW-2. The deposition of the complainant is appended with the petition as Annexure P-2.

During the trial proceedings, the accused/petitioner filed his application dated 30.11.2021 (Annexure P-3) with a prayer for recalling the complainant (PW-2) for the purpose of cross examination on certain issues, but the said prayer was opposed on behalf of the prosecution by filing a reply (Annexure P-4). The trial Court after considering the grounds raised in the application as well as the arguments on behalf of the learned counsel for the parties proceeded to dismiss the application through impugned order dated 08.03.2022 (Anexure P-5). Hence, this petition.

Learned counsel has argued that the petitioner was falsely implicated in this case, who was not even present on the spot as he was contesting elections and one of the rival candidates, namely, Gurdeep Singh son of Balkar Singh was enrolled in two different voter lists and upon a complaint given by the petitioner, a case was registered against him in 2008. According to him, Balkar Singh is one of the prosecution witnesses in this case, therefore, at

his instance, petitioner was falsely implicated in the FIR (Annexure P-1). He has further argued that as per prosecution, petitioner had forcibly dragged Gurvinder Singh @ Bunty from the said car and his co-accused Karambir Singh fired at him, but during the cross examination of the complainant, the relevant questions were not put by the then defence counsel, therefore, the said witness deserves to be recalled for further cross examination. He has argued that provisions of Section 311 Cr.P.C are meant to advance the cause of justice, therefore, the trial Court committed a serious error in law in not exercising the jurisdiction vested in it. In support of his argument, he has relied upon judgements passed by Hon'ble Supreme Court in "***P.Sanjeeva Rao Vs. State of A.P., 2012 (3) R.C.R.(Criminal) 653*** and ***Rajaram Prasad Yadav Vs. State of Bihar, 2013 (3) R.C.R. (Criminal) 726***. He prays that the impugned order be set aside and the application filed by the petitioner be allowed.

During the course of hearing, it has not been disputed by learned counsel that deposition of PW-2 including cross examination by different defence counsel representing various accused persons was concluded on 17.03.2017 and the application has been filed on behalf of the petitioner after changing defence counsel. According to Mr. P.S.Ahluwalia, learned Advocate, the previous cross examination conducted by the then counsel was not proper, therefore, the petitioner is well within his rights to call for the said witness again for putting him more questions in cross examination to elicit truth relating to the petitioner.

Learned counsel for the petitioner has been heard and with his assistance, the case file has been perused carefully.

Before adverting the facts and merits of this case, it would be appropriate to examine the scope and object of Section 311 Cr.P.C., which 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.”

A plain reading of the above section makes it abundantly clear that this provision empowers the trial Court to analyze the relevance and importance of any person as a witness, in the context of the trial or other proceedings pending before it, and if, in the considered opinion of the trial Court, the summoning of the said person for examination as a witness or recall of a witness already examined for the purposes of re-examination, appears to be necessary in order to reach at just conclusion, the exercise of power would be justified. It is needless to observe here that this power being extra ordinary in nature cannot be invoked in a routine manner, but in exceptional situations, keeping in mind the facts and other attending circumstances of the case. This power can be exercised by the trial Court at any stage of an inquiry, trial or other proceedings pending under Code of Criminal Procedure, and this provision has been minutely examined by the Hon'ble Supreme Court as well as different High Courts on number of occasions, and invariably it has been

observed that the jurisdiction under Section 311 Cr.P.C is to be exercised with great care and circumspection.

Here, it will be relevant to note that the general rule relating to examination of witnesses during trial, and their order of examination is contained in Chapter X of Indian Evidence Act, 1872 (hereinafter referred to as Evidence Act), and the enabling Sections 137 and 138 Evidence Act are extracted below:-

*“137. **Examination-in-chief.**—The examination of a witness by the party who calls him shall be called his examination-in-chief.*

***Cross-examination.**—The examination of a witness by the adverse party shall be called his cross-examination.*

***Re-examination.**—The examination of a witness, subsequent to the cross-examination by the party who called him, shall be called his re-examination.”*

*“138. **Order of examinations.** - Witnesses shall be first examined-in-chief, then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.*

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief.

Direction of re-examination.—The re-examination shall be directed to the explanation of matters referred to in cross-examination; and, if new matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter.”

A reading of the above provisions shows that these are applicable when the parties adduce their respective evidence during the trial either in a civil case or a criminal trial, whereas section 311 Cr.P.C. is an

exception to the general rule which empowers the Trial court to summon or recall a witness for examination or re-examination. Further, Section 165 Evidence Act also ensures the participatory role of the Trial Judge, who can also put relevant court questions to the witness to ascertain the truth and the same reads as under:-

“165. Judge’s power to put questions or order production.— The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the Judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under sections 121 to 131, both inclusive, if the questions were asked or the documents were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted.”

Thus, it is clear that this Section 311 Cr.P.C. is to be read in conjunction with Section 165 Evidence Act, and, it is also apparent that this provision does not confer any right upon any of the parties for summoning any person for examination as witness or recalling a witness already examined for re-examination, and the trial Court before exercising this power, must ensure existence of strong ground. Further, the trial court can exercise this power suo moto also without any application and though the language of Section 311

Cr.P.C. does not contain the expression “*cross-examination*”, as it only speaks about summoning of any person or recall of a witness already examined, either for examination or re-examination of the witness, as the case may be, even then it cannot be construed that for the purpose of cross-examination of a witness, this section cannot be pressed into service, as it would be a narrow interpretation of this section. By way of liberal interpretation the power vested with the trial Court can be exercised for this purpose also, but at the same time the trial court has to record a satisfaction that exercise of this extra ordinary power shall not cause any prejudice to the other party.

In this regard, reference can be made to the decision of Hon'ble Supreme Court in “*Zahira Habibulla H Sheikh And Anr vs State Of Gujarat And Ors, 2004 (2) R.C.R. (Criminal) 836*”, and the relevant observations read as under:

“The power of the Court under [Section 165](#) of the Evidence Act is in a way complementary to its power under [Section 311](#) of the Code. The section consists of two parts i.e (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Court to examine a witness if his evidence appears to be essential to the just decision of the Court. Though the discretion given to the Court is very wide, the very width requires a corresponding caution. [In Mohan Lal v. Union of India](#) (1991 Supp (1) SCC 271) this Court has observed, while considering the scope and ambit of [Section 311](#), that the very usage of the word such as, 'any Court' 'at any stage', or 'any enquiry or trial or other proceedings' 'any person' and 'any such person' clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions [of the Code](#). The second part of the section does not allow any discretion but obligates and binds the Court to take

necessary steps if the fresh evidence to be obtained is essential to the just decision of the case - 'essential', to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of [Section 311](#) but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.

Ultimately, as noted above, ad nauseam the duty of the Court is to arrive at the truth and subserve the ends of justice. [Section 311](#) of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for

the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.”

Now reverting to the facts of the case in hand and upon analysing the same, this Court finds that initially the prosecution had examined PW-2 Jaspal Singh in April 2014, but after his part examination, the prosecution applied for summoning additional accused under Section 319 Cr.P.C., and after decision of the said application, the witness was again called for recording evidence. The examination-in-chief of this witness was concluded on 14.07.2016, and thereafter this witness was offered by the prosecution to the defence for cross examination, which was conducted by different defence lawyers on different dates and the same concluded on 17.03.2017.

During the course of hearing, the complete deposition of PW-2 Jaspal Singh was produced before this Court, by learned counsel, who has also not disputed the fact that the counsel representing the petitioner had also cross-examined the said witness. So, it is apparent from the material on record that the entire process and procedure of examination of witness was recorded by the trial Court in accordance with law.

At this juncture, it also needs to be noticed that the evidence of the prosecution stood closed long back, much before the filing of the application dated 30.11.2021 under Section 311 Cr.P.C., and even by that time, six defence witnesses also stood examined before the trial Court. The application is based on the solitary ground that earlier the cross-examination of PW-2, Jaspal Singh was not conducted properly by the then defence counsel, therefore, recalling of this witness for further cross-examination is necessary.

The cross-examination of a witness of an adverse party or a hostile witness is an art and every lawyer as an individual, may have different ways of grilling the witness in order to test the truthfulness and credibility of such deposition recorded during examination-in-chief, so, there cannot be a stereotyped questionnaire to be used by lawyer during cross-examination, as much would also depend upon the answers of the witness. Of-course the cross-examination may appear like a battle between un-equals, where a rustic witness is cross-examined by a lawyer, but the ground that the previous defence lawyer was not skillful or the new lawyer is more refined is not worth acceptance, particularly when there is no suggestion that the previous defence lawyer did not pursue the interest of accused honestly. If, such a ground is accepted for exercise of power under Section 311 Cr.P.C this would not only add delay in conclusion of trial proceedings, but would also put extra burden upon the trial Judge to evaluate the multiple depositions of a witness. Also, the trial Courts have to be very careful while dealing with such type of prayers, and must bear in mind that many a times it has been noticed that the recalled witness retracts from the testimony recorded earlier and it results in damage to the prosecution case.

The decision in *P.Sanjeeva Rao Vs. State of A.P. (supra)* relied upon by the learned counsel is distinguishable on facts, as in the said case, prosecution witnesses sought to be recalled, were never cross-examined and as per ground raised by the accused therein, in fact the defence lawyer had reserved his right to cross-examine those witnesses, after examination of some other witness, but inadvertently, the trial Court recorded their cross-examination

as 'nil' and hon'ble Supreme court accepted the omission as a mistake and allowed the request. But in the present case, PW-2-Jaspal Singh was subjected to lengthy cross-examination, by all the defence counsels, therefore, this judgment does not lend any strength to the case of the petitioner and acceptance of the application would amount to fresh cross examination of witnesses.

Similarly, the other case, wherein the Hon'ble Supreme Court had laid down certain principles for exercise of extra ordinary power under Section 311 Cr.P.C., which included inadvertent omission to adduce important evidence, and observed that the Court should be liberal in allowing the request, but in the present case, the petitioners are seeking recall of the prosecution witness after a long delay in order to again cross examine him, therefore, the decision in ***Rajaram Prasad Yadav*** (supra) is also not applicable in the present case.

At the same time, it is also a settled law that no party should be allowed to fill up a lacunae under the garb of adducing additional evidence by invoking Section 311 Cr.P.C and in this regard, reference can be made to the judgment of Hon'ble Supreme Court of India in “***Natasha Singh Vs. CBI, 2013***

(3) R.C.R. (Criminal) 368, wherein the following observations were made:-

“14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Criminal Procedure Code must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the

additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party.

The power conferred under Section 311 Criminal Procedure Code 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 great caution and circumspection.”

Thus, in view of the above discussion, this Court finds that the trial Court has considered the merits of the application in accordance with law and has rightly refused to exercise the jurisdiction under Section 311 Cr.P.C. The impugned order does not suffer from any illegality or impropriety, therefore, no interference is called for.

Resultantly, petition fails and is dismissed *in limine*.

(MANOJ BAJAJ)
JUDGE

07.04.2022

vanita

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