

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(114)

CRM-M-36888-2018
Date of decision: 05.08.2022

Jyoti

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vivek Salathia, Advocate for the petitioner.

Mr. Anmol Singh Sandhu, AAG, Punjab
for State-respondent No.1.

Mr. Rakesh Sobti, Advocate for respondents No.2 to 5.

...

SUVIR SEHGAL, J. (Oral)

Instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking quashing of impugned order dated 23.08.2017, Annexure P-1, passed by the learned JMIC, Amritsar, vide which, the Trial Court has dismissed the application filed under Section 311 of the Code, in criminal trial titled as State versus Sukhwinder Kaur and others arising out of FIR No.30 dated 05.07.2012, registered for offences under Sections 406 and 498-A of the Indian Penal Code, 1860, at Police Station D-Division, Amritsar.

Counsel for the petitioner has urged that the Trial Court has rejected the application on an erroneous assumption that it has no power to allow further re-examination-in-chief of the complainant-petitioner when her cross-examination has started.

State counsel has submitted that vide order dated 27.08.2018, High Court directed the Trial Court to adjourn the proceedings beyond the

date fixed by this Court and the proceedings are now pending for 17.09.2022. Supporting the order, counsel representing accused respondents No.2 to 5, has argued that the complainant-petitioner cannot be permitted to file repeated applications under Section 311 of the Code in an attempt to fill in the lacuna in the case.

Heard counsel for the parties.

Power of the Court under Section 311 of the Code is very wide and any witness can be produced or re-called, at any stage, of the trial prior to delivery of judgment. The test to be applied is whether evidence of witness sought to be produced or re-called is essential for the just decision of the case. The facts have to be examined in the light of the above settled legal position.

A perusal of FIR shows that specific allegation leveled is that the accused have retained gold ornaments of the complainant-petitioner. By way of earlier application filed under Section 311 of the Code, the prosecution brought on record the bills of the ornaments as well as the details of the medical treatment of the complainant-petitioner on account of injuries suffered due to physical assault by the accused. However, due to an over-sight, a specific statement regarding entrustment of the dowry articles could not be made by the complainant-petitioner in her examination-in-chief, for which purpose, the application in question has been moved.

It is, therefore, apparent that the prayer in both the applications filed under Section 311 of the Code is different. A party in a criminal case can file separate applications claiming different reliefs each time. There is no bar to invoke Section 311 of the Code on repeated occasions if the

situation so arises.

Denial of opportunity to the complainant-petitioner for re-examination would curtail her right to a fair chance to prove her case. It has been observed by the Hon’ble Supreme Court in *Rajendra Prasad Versus Narcotic Cell (1999) 6 SCC 110* that no party in a trial can be foreclosed from correcting errors. In case proper evidence has not been produced or a relevant material has not been brought on record due to inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

This Court is, therefore, of the opinion that the Trial Court has erred in appreciating the legal position and the finding recorded by it that it has no power to summon the complainant-petitioner for re-examination, is fallacious. Therefore, impugned order, Annexure P-1, cannot be sustained.

In view of the above, order dated 23.08.2017, Annexure P-1, is set aside. Trial Court is directed to provide one effective opportunity to the complainant-petitioner for her re-examination on 17.09.2022, or on any day to be fixed within a fortnight thereafter, subject to deposit of cost of Rs.10,000/- with the Punjab and Haryana High Court Bar Association (Benevolent Fund), Chandigarh.

It is clarified that this opportunity shall be granted to the complainant-petitioner on furnishing of receipt of deposit of cost.

Petition is disposed of.

(SUVIR SEHGAL)
JUDGE

05.08.2022
Pardeep

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes