

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

Criminal Misc. No.M-38840-2018

Date of Decision: May 19, 2022

Kulwinder Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr. Sunil Chahda, Sr. Advocate with
Mr. Saurav, Advocate for the petitioner.

Mr. R.S. Khaira, AAG, Punjab.

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HARINDER SINGH SIDHU, J.

Present petition has been filed praying for quashing the order dated 11.07.2018 passed by the learned Chief Judicial Magistrate Patiala, whereby the application under Section 311 Cr.P.C. filed by the petitioner for examining the Director, Referral Food Laboratory, Ghaziabad as a witness alongwith report dated 20.06.2012 and relevant record has been dismissed.

The petitioner has been arrayed as accused No.2 in a complaint dated 08.04.2013 filed by the Food Safety Officer under Sections 59 and 42(5) of the Food Safety and Standards Act, 2006. As per the allegations in the complaint a milk truck No.PB-29-H-8844 was intercepted by the complainant under the approval of the District Health Officer, Office of Civil Surgeon Patiala, The truck was being driven by Balkar Singh co-accused. It was carrying 11000 liters of Mixed Milk meant for sale for

human consumption. Balkar Singh disclosed that the petitioner was the person responsible for conduct of the business. A sample of the Mixed Milk for analysis was drawn after giving Balkar Singh a notice in Form V-A. The sample was sent to the Referral Food Laboratory, Ghaziabad. A report dated 20.06.2012 was received as per which the sample was found unsafe under Section 3(i)(zz)(v) of the Act. The opinion given in the said certificate/report dated 20.06.2012 reads as under:

“Opinion: In the same of Mixed Milk test for Glucose and Skimmed Milk Powder are positive, not permitted under Regulation No.1.2.10 and B.R. Reading of extracted fat at 40 C is above the maximum prescribed limits for ghee laid down in Table under Regulation No. 2.1.10:2 of Food Safety & Standards (Food Products Standards and Food Additive) Regulations, 2011. The sample is thus unsafe under Section 3)i) (zz)(v) of FSS Act, 2006.”

After completion of necessary formalities the complaint was filed against the petitioner and co-accused Balkar Singh. In the complaint five witnesses have been cited. Director, Referral Food Laboratory, Ghaziabad has been cited as a witness along with report dated 20.06.2012. The prosecution examined the other four witnesses mentioned in the list of witnesses but the Director, Referral Food Laboratory, Ghaziabad was not examined.

The petitioner filed an application under Section 311 Cr.P.C. for examining Director, Referral Food Laboratory, Ghaziabad as a witness alongwith the report and the relevant record. It was averred by the petitioner in the application that the prosecution case is based on the report which is

the most material evidence against him. There are several infirmities in the said report for which Director, Referral Food Laboratory, Ghaziabad is required to be examined to ascertain as to whether the test and methodology adopted by him in preparing the report is correct. It was further averred that there are serious doubts about the validity and credibility of the procedure followed in declaring the sample of Mixed Milk as unsafe merely on the basis of positive test for the presence of Glucose and Skimmed Milk Powder and higher B.R. reading of the extracted fat at 40 C in the sample of Mixed Milk. Hence the Director was required to be summoned as a witness.

The application was dismissed by learned Chief Judicial Magistrate primarily on four grounds:

- i) The prosecution is master of its own case and as such, the same cannot be compelled by the accused to examine any person or witness, not included in the list of witnesses.
- ii) The report of the Referral Food Laboratory, Ghaziabad has been exhibited as E. P-8 by the prosecution.
- iii) The accused has remedy to call any witness in defence.
- iv) The present case is included in the list of action plan cases.

Mr. Sunil Chadha, learned Senior counsel for the petitioner has argued that the order dismissing the application under Section 311 Cr.P.C. is illegal. He argued that as per Section 311 Cr.P.C. the Court at any stage of any inquiry trial or other proceedings may summon any person as a witness if the evidence of such person appears to be essential for the just decision of the case. He argued that the examination of the Director Referral Food

Laboratory Ghaziabad is extremely important in the context of the report which is the very foundation of the case of the prosecution. He has relied on a decision of this Court in **Amrit Lal and others Vs. State of Haryana and others, CRM-52240-M-2005** decided on 18.01.2007. In the said case it has been held that though the report of a government scientific expert is per se admissible in evidence. However, the scientific expert may be summoned for cross-examination if genuine request to that effect is made by the accused. Though it is not a must, however, the Court is required to exercise its discretion judiciously specially when a request comes from the accused for the said purpose.

The relevant observation of the Court reads :

“7. In the present case, though the report Ex. PQ was admitted in evidence without there being any objection from the accused and the said report thereafter put to the accused while they were examined under Section 313 Criminal Procedure Code yet an objection was raised by them during the stage of defence and arguments that Dr. R.K. Kaushal, who was the author of the said report and an expert, be called for cross-examination. Section 293(2) Criminal Procedure Code permits the summoning of the expert for his examination as to the subject-matter of his report. Though, it is not a must, but the Court has to exercise its discretion vested with the such an expert to the Court for his examination. This discretion vested with the Court is to be exercised judiciously especially when a request had come from the accused for the said purpose.

8. In State of Himachal Pradesh v. Jai Lal, 1999(4) RCR (Criminal) 80 (SC), the Hon'ble Supreme Court, while relying upon an earlier judgment held that the report of an expert did not go in evidence automatically and he had to be examined as

a witness in the Court and face cross-examination. It was observed as under :-

*"The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in Court and has to face cross-examination. This Court in the case of **Hazi Mohammed Ikramul Haque v. State of West Bengal, AIR 1959 Supreme Court 488** concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons."*

*9. In **State of Punjab v. Balraj Singh Takhar, 2003(4) RCR (Criminal) 146 (P&H)**, a Division Bench of this Court held that though the report of an expert was ex facie admissible in evidence in view of the provisions of Section 293 of the Code, the Court ought to have granted an opportunity to the complainant to produce the expert. It was held as under :-*

*"Furthermore, the learned trial Court has also not appreciated the provisions of Section 293 of the Code in their right perspective. If the **Court was of the opinion** that the report required to be proved and it intended some clarification, it was obligatory upon the Court to summon the expert before rejecting the report wholly or partially. The findings recorded by the learned trial Court are clearly suggestive of the fact that it has declined to fully and substantially rely upon the report, which was ex facie admissible in evidence. The Court ought to have granted an opportunity to the complainant to produce the expert."*

10. Learned trial Court also did not rule out that a witness might be recalled or summoned at any stage but while declining the request of the accused for summoning Dr. R.K. Kaushal, it held that the cross-examination of the said witness was not

essential. The trial was still in progress. The accused had come up with an application under Section 311 Criminal Procedure Code for summoning Dr. R.K. Kaushal for cross-examining him in respect of the report in question. The justice should not be done but it should appear to have been done. In the event of the accused making a genuine request before the trial Court, such a request ought to have been accepted so that at any later point of time he may not allege that he was not given sufficient opportunity to defend him in the trial.”

In view of the above, the present petition is allowed. The impugned order is set aside. The Trial Court is directed to summon the Director, Referral Food Laboratory, Ghaziabad for examining him with respect to the report.

May 19, 2022

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No