

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

Sr. No.248

CRR-2366-2015 (O&M)
Date of decision : 8.12.2022

Hari Singh

.....Petitioner(s)

VERSUS

State of Haryana

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Satish Chaudhary, Advocate for the petitioner

Mr.Tanuj Sharma, AAG, Haryana

Mr.Parveen Kumar, Advocate for
Mr.Abhimanyu Singh, Advocate for the accused.

AMAN CHAUDHARY, J.

The challenge in the present petition is to the order dated 11.6.2015 passed by Sub Divisional Judicial Magistrate, Ferozepur Jhirka, whereby the application under Section 311 Cr.P.C. filed by the petitioner was dismissed.

Learned counsel for the petitioner submits that the learned trial Court has committed a grave error in dismissing the application filed under Section 311 Cr.P.C. for summoning and examining the prosecution witnesses in a haste manner. He further submits that the case is at the stage examination of the prosecution witnesses, and only one witness has been examined so far, despite that the learned trial Court without affording sufficient opportunity, closed the evidence. He further submits that non-examination of the said witnesses will cause an irreparable loss of the petitioner.

Learned counsel for the accused opposes the petition on the ground that the order dismissing the application, is justified. He further submits that sufficient opportunities were granted to the prosecution to produce and examine the witnesses. The present application is merely to delay the proceedings and to fill up the lacuna.

Heard.

It is apposite to refer to the order dated 11.6.2015 passed by learned JMIC, Chandigarh, which reads thus:

“The instant application was moved by the counsel for the complainant. The charge on the accused were framed on 19.07.2013. Since 19.07.2013, 13 opportunities have been availed by prosecution for leading evidence. One witness has already been examined but his application is moved by the counsel for complainant only in the year 2015. Moreover, the complainant has been already examined. Till date, several summons have been issued but speedy trial is fundamental right of the accused, which cannot run at the mercy of the complainant. Under these circumstances, I find no justification to summon remaining witnesses in the present case. The instant application stands dismissed.”

In the case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation**, (2019) 14 SCC 328 Hon'ble The Supreme Court has 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."

Perusal of the order shows that the matter is pending since July, 2013 and despite 13 effective opportunities having been granted by the trial Court, the prosecution was unable to produce the witnesses. Learned counsel for the petitioner has also not been able to demonstrate any valid reason before this Court to justify the application made by him.

In view of the peculiar facts and circumstances of the case and the judgments referred to above, this Court finds no illegality or perversity calling for any intervention in the impugned order, as a sequel thereto, the present petition being bereft of merit is dismissed.

8.12.2022
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No