

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

**CRR-649 of 2016 (O&M)
Date of Decision:- 26.05.2022**

Varinder Singh Dhillon

....Petitioner

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. N.S. Dandiwal, Advocate
for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

Ms. Rimjhim Mahajan, Advocate
for Mr. Sanjeev Pandit, Advocate
for the accused.

KARAMJIT SINGH, J.

Petitioner has filed the present petition against the order dated 6.1.2016 passed by the Court of Sub Divn. Judicial Magistrate, Phul, District Bathinda, vide which the application moved by accused under Section 311 Cr.P.C for recalling of prosecution witnesses for the purpose of cross-examination was allowed.

The brief facts of the case are that during the trial of case titled State Vs. Jaswant Singh, FIR No.34 dated 10.06.2006 under Section 365, 382, 342, 323 IPC Police Station Kotwali Bathinda, prosecution examined-in-chief PWs namely Varinder Singh

(complainant), his father Balwant Singh and one Mohinder Singh on 17.10.2011 but they were not cross-examined on that date. It appears that the aforesaid PWs were bound down for 12.11.2011 for their cross-examination but even on that date they were not cross-examined by the accused or his counsel and further on 26.11.2011 it was the same situation and as such, the cross-examination of PWs Varinder Singh, Balwant Singh and Mohinder Singh was declared to be treated as 'nil'. Thereafter, the trial kept on proceeding further and at the fag end, the accused filed an application under Section 311 Cr.P.C on 05.11.2015 for recalling the aforesaid three PWs for their cross-examination. The same was allowed by the trial Court vide impugned order dated 6.1.2016.

The petitioner being aggrieved by the aforesaid order has filed the present petition.

The counsel for the petitioner contends that there was no illegality in the order dated 26.11.2011 whereby the cross-examination of PWs petitioner Varinder Singh, Balwant Singh and Mohinder Singh was treated as 'nil' by the trial Court. The counsel further contends that ample opportunity was given to the accused to cross-examine the aforesaid PWs but he failed to do so and thus, trial Court rightly passed order dated 26.11.2011.

The counsel for the petitioner further contends that after the passing of the aforesaid order dated 26.11.2011, the accused did not challenge the same for the next four years and finally when the

trial was at its fag end, the accused moved application under Section 311 Cr.P.C on 05.11.2015 to recall the aforesaid PWs for the purpose of their cross-examination. The counsel further contends that the said application was clearly time barred but still the trial Court without taking into consideration the issue of limitation, allowed the same vide impugned order dated 06.01.2016. The counsel further contends that the impugned order is totally illegal and deserves to be set aside.

On the other hand, Ms. Rimjhim Mahajan, Advocate appearing on behalf of the accused submits that the trial Court having vast power under Section 311 Cr.P.C. rightly passed the impugned order and no ground is made out to interfere in the same.

I have considered the submissions made by counsel for the parties.

There is no doubt regarding the fact that cross-examination of petitioner Varinder Singh, Balwant Singh and Mohinder Singh was ordered to be treated as 'nil' vide order dated 26.11.2011, whereas application under Section 311 Cr.P.C to recall the said PWs for their cross-examination was filed on 05.11.2015 by the accused. Admittedly, there was delay of about 4 years in filing of the said application moved under Section 311 Cr.P.C.

There is no doubt that the power under Section 311 Cr.P.C. is a vast one. This power can be exercised at any stage of the trial in the interest of justice, for the just decision of the case. However, this discretion conferred on the Court must be exercised

judiciously. Whether such a power is to be exercised or not would depend upon the facts and circumstances of each case.

In the instant case, three PWs were examined-in-chief by the trial Court on 17.10.2011 and their cross examination was deferred to 12.11.2011 on the request of defence counsel. Even on 12.11.2011, said three PWs were present but not cross-examined and case was adjourned to 26.11.2011 and even on that date their cross examination was not conducted and as such, the same was treated as 'nil' by the trial Court. Thereafter, the accused moved an application under Section 311 Cr.P.C. on 05.11.2015. The main objection of counsel for the petitioner is that the accused failed to challenge the order, whereby the cross-examination was directed to be treated as 'nil', within a reasonable time of its passing, but the accused failed to do so and as such, the application under Section 311 Cr.P.C. moved by the accused being time barred, deserved to be dismissed on that very ground. However, this Court is of the view that Section 311 Cr.P.C. provides that the trial Court was having power to entertain such an application at any stage till the conclusion of the trial. So the aforesaid objection raised by the counsel for the petitioner is not sustainable and is hereby overruled.

Undoubtedly Section 311 Cr.P.C. has been enacted to enable the court to find the truth and render a just decision, whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceedings can summon any person as

a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who is expected to be able to throw the light upon matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society.

In the instant case, the interest of justice demanded that proper opportunity should be afforded to the accused to cross-examine all the witnesses tendered by the prosecution. So trial Court rightly passed the impugned order for securing justice. There is no illegality in the impugned order, even if the application under Section 311 Cr.P.C was moved by the accused at the belated stage.

Consequently, the present petition is hereby dismissed being devoid of merits and the interim order, if any, passed in favour of the petitioner stands vacated.

Copy of this order be sent to the Trial Court for information and direction to proceed further with the trial and to conclude the same expeditiously, as the FIR in the present case was registered in the year 2006.

26.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No