

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRR-1763-2018

Date of Decision: 15.11.2022

Gobind Parsad

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Rupam K. Aggarwal, Advocate,
for the petitioner.

Ms. Kanica Sachdeva, AAG, Punjab.

KARAMJIT SINGH, J.

Present petition has been filed by the petitioner-accused against the order dated 8.5.2018 whereby the application moved by the prosecution under Section 311 of Cr.P.C. to recall ASI Gurmail Singh Investigating Officer along with the case property was allowed by the learned trial Court in case having FIR No.130 dated 26.9.2013 under Section 379, 409, 411 IPC and Section 136 of Indian Electricity Act at Police Station Lahori Gate, Patiala.

Notice of motion in the present petition was issued vide order dated 17.5.2018.

Counsel for the petitioner submits that during the trial, ASI Gurmail Singh was examined as PW3 and at that time, the prosecution failed to produce the case property. He has further submitted that later on, the prosecution moved application under Section 311 Cr.P.C. to recall the said witness along with the case property to fill the *lacuna* in the

prosecution case; that in this manner, the impugned order whereby the aforesaid application moved by the prosecution has been allowed by the trial Court is totally illegal and perverse and deserves to be set aside.

Present petition is opposed by the State counsel who while supporting the impugned order submits that production of the case property is necessary for just decision of the case and the same has been rightly allowed by the trial Court vide impugned order and there is no illegality in the same.

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

Present case is relating to theft of wires belonging to PSPCL and as per prosecution version, the said stolen wires were recovered from the possession of the accused persons by the police party headed by ASI Gurmail Singh. During the pendency of the trial, said Investigating Officer was examined as PW3 as is evident from Annexures P-1 to P-4 and Annexures P-8 to P-11. However, at the time of recording of the aforesaid deposition of ASI Gurmail Singh, the prosecution failed to produce the case property to establish its identity before the trial Court. Thereafter, the prosecution filed an application under Section 311 Cr.P.C. to recall the said investigating officer along with the case property. The said application was contested by the accused persons and finally, the same was allowed by the trial Court vide impugned order dated 8.5.2018.

This Court is of the view that production and proof of the case property before the trial Court is necessary for just decision of the case and for proving the same, presence of the investigating officer is required and

case property. The plea taken by the counsel for the petitioner that allowing of the aforesaid application moved by the prosecution under Section 311 Cr.P.C. amounts to filling of *lacuna* in the prosecution case is not tenable and thus is hereby rejected.

In light of above, this Court is of the view that there is no illegality or perversity in the impugned order. Accordingly, the present petition is hereby dismissed being devoid of merits. The case being of the year 2015, the trial Court is hereby directed to expedite the trial and to dispose of the same, preferably within next 4 months.

(KARAMJIT SINGH)
JUDGE

November 15, 2022

Paritosh Kumar

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No