

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

**CRM-M-34183 of 2019
Date of Decision:- 24.05.2022**

Durga Singh Bist

....Petitioner

Vs.

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Rajiv Joshi, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

KARAMJIT SINGH, J.(Oral)

Petitioner has filed the present petition for quashing of order dated 24.05.2019 passed by CJM, NRI Court, Jalandhar, Annexure P-6, whereby the application filed by the petitioner under Section 311 Cr.P.C for recalling of the witnesses was dismissed (arising out of the proceedings in FIR No.112 dated 30.12.2015 under Section 420/467/468/471 IPC PS Division No.6, Jalandhar).

The brief facts of the case are that the petitioner is accused in criminal case having FIR No.112 dated 30.12.2015 under Section 420/467/468/471 IPC, registered at PS Division No.6,

Jalandhar, in which he is facing trial. During trial the prosecution examined number of PWs including PW2 Prem Sagar, PW3 Shama Bist and PW8 Arvind Kaur Manager, who had been cross-examined by the petitioner/accused. On the completion of prosecution evidence statement of accused under Section 313 Cr.P.C. was recorded. Thereafter, the prosecution moved an application under Section 311 Cr.P.C. and the same was allowed and accordingly, PW10, Sanjeev Kumar, Assistant Manager, Indian Overseas Bank, Jalandhar along with record relating to bank account No. 175501000000509, was summoned and examined by the prosecution. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. to recall PW2 Prem Sagar Dhingra, PW3 Shama Bist (complainant) and PW8 Arvind Kaur Manager for their further cross examination. The said application was contested by the prosecution and was finally dismissed by the trial Court vide impugned order dated 24.05.2019.

Being aggrieved the petitioner has filed the present petition.

The counsel for the petitioner contends that PW10 Sanjeev Kumar, Assistant Manager of concerned Bank, was allowed to be examined by the trial Court even after the recording of statement of the accused under Section 313 Cr.P.C. The counsel further contends that certain new facts surfaced in the statement of PW10 and as such, it is necessary to further cross-examine PW2 Prem Sagar Dhingra, PW3 Shama Bist (complainant) and PW8

Arvind Kaur Manager to confront them with the new facts which came to light during the examination/cross-examination of PW10. The counsel further contends that the trial court is having power under Section 311 Cr.P.C. to recall the witnesses in order to meet the ends of justice and to arrive at the truth. The counsel further contends that the impugned order is totally illegal and deserves to be set aside. In support of his arguments the counsel for the petitioner referred to *Raosaheb Vs. Bebitai, 2008 (22) RCR (Criminal) 411 (Bombay)*.

On the other hand, the present petition has been contested by the State counsel who submitted that there is no illegality in the impugned order. The counsel further contends that the present petition deserves to be dismissed.

I have considered the submissions made by counsel for the petitioner as well as State counsel.

At the outset this Court is firstly required to deal with scope and ambit of Section 311 Cr.P.C. which is reproduced herein below:-

“311. Power to summon material witness, or examine person present- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

The Section confers a wide discretion on the Court to act as the exigencies of justice require. This power can be exercised at any stage of the trial. However the wide discretion conferred on the Court under Section 311 Cr.P.C. must be exercised judiciously and the same largely depend upon the facts and circumstances of the case.

Now advertng to the facts of the present case, it is clear that PW2 Prem Sagar Dhingra, PW3 Shama Bist (complainant) and PW8 Arvind Kaur Manager, were examined by the prosecution and their cross-examination was conducted during the course of the trial. On the completion of prosecution evidence, the petitioner/accused was examined under Section 313 Cr.P.C by the trial Court. Thereafter, the request made by the prosecution to summon PW10 Sanjeev Kumar Assistant Manager of concerned Bank was allowed by the trial court and accordingly, he was examined and his statement was completed. As per counsel for the petitioner certain new facts surfaced during the examination of PW10 and as such, the interest of justice demands further cross examination of PW2, PW3 and PW8 which is necessary for the just decision of the case.

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.

Bearing in mind the aforesaid settled position of law, this Court is of the view that interest of justice demands that the petitioner be allowed to further cross-examine PW2 Prem Sagar Dhingra, PW3 Shama Bist (complainant) and PW8 Arvind Kaur Manager to extract the truth.

Consequently, the present petition is allowed and the impugned order dated 24.05.2019 (Annexure P-6), is set aside and the trial Court is directed to summon PW2 Prem Sagar Dhingra, PW3 Shama Bist (complainant) and PW8 Arvind Kaur, Manager and to give one effective opportunity to the petitioner/accused to further cross examine the said PWs with regard to the fresh facts relating to the case which came to light during the examination of PW10 Sanjeev Kumar, Assistant Manager. The parties to directed to appear before the trial court on the date already fixed for further proceedings.

24.05.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No