

116 IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

\*\*\*\*

CRM-M-51981-2022

Date of Decision: 11.11.2022

Santosh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE HARSH BUNGER**

Present: Mr. Gaurav Jain, Advocate  
for the petitioner.

Mr. Subhash Godara, Additional A.G., Punjab

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**HARSH BUNGER J.**

This petition has been filed under Section 482 Cr.P.C. for setting aside impugned order dated 17.10.2022 (Annexure P-1), passed by the Judge, Special Court, Patiala, whereby the application filed under Section 311 Cr.P.C. by respondents No.2 to 4 in FIR No.78 dated 17.08.2017, under Sections 302, 307, 201, 120-B and 34 IPC, registered at Police Station Ghanaur, District Patiala, has been allowed.

Succinctly, the abovesaid case FIR No.78 dated 17.08.2017 was registered on the statement of deceased-Ujjagar Singh s/o Basanta Ram, against respondents No.2, 3 and one unknown person. Allegation is that respondents No.2 to 4 had burnt the deceased alive, due to which, he died later and thus Section 302 IPC was added later on in the present FIR. After conclusion of the investigation, the final report was presented against respondents No.2 to 4 and finding a *prima facie* case, charges under

Sections 120-B, 302 and 201 IPC were framed against them on 04.09.2018.

In the challan, the prosecution had cited twenty three witnesses and later on two more witnesses were added in the supplementary challan. Accordingly, total twenty five witnesses were cited by the prosecution and the prosecution evidence was closed on 12.10.2021. It is worth noticing that out of the total twenty five prosecution witnesses, two witnesses were given up. Statements of accused were recorded under Section 313 Cr.P.C. and the defence evidence was called on 21.10.2021.

Thereafter, respondents No.2 to 4 moved an application under Section 311 Cr.P.C. (Annexure P-2) on 09.09.2022 for summoning Dr. Usha Dhingra, who had initially examined the patient, i.e. deceased-Ujjagar Singh, while being posted at A.P. Jain Hospital, Rajpura and Dr. Usha Dalal of Government Medical College and Hospital, Sector-32, Chandigarh, who had observed the general condition of the patient and treated him, which application stand allowed by the Judge, Special Court, Patiala, vide order dated 17.10.2022 (Annexure P-1).

In the instant petition, the petitioner has challenged the above said order dated 17.10.2022 (Annexure P-1), *inter alia* on the ground that the prosecution evidence had been concluded way back in the year 2021 and respondents No.2 to 4 were very well aware of the fact that certain witnesses had been given up, however, no steps were taken for examining the said witnesses at the stage of their evidence. Accordingly, respondents No.2 to 4 cannot be allowed now to examine those left out witnesses by filing an application under Section 311 Cr.P.C., especially when the prosecution evidence stands closed. It is the submission of learned counsel for the petitioner that the filing of said application is only a ploy to delay the trial, and even otherwise, the examination of Dr. Usha Dhingra and Dr.

Usha Dalal would not serve any useful purpose at this stage of the trial.

On the other hand, counsel for respondent-State to whom an advance copy of the petition had been supplied, submits that the application under Section 311 Criminal Procedure Code has been filed for summoning Dr. Usha Dhingra and Dr. Usha Dalal, who were mentioned in the list of witnesses at serial no. 7 and 8 of supplementary challan, respectively; but were not examined. He contends that the purpose and intent of Section 311 Criminal Procedure Code is to provide the Court with the authority to exercise its discretion, so that just decision could be reached by the Court in a case. It is submitted that learned Trial Court having been satisfied in the given facts and circumstances of the case, have summoned Dr. Usha Dhingra and Dr. Usha Dalal as witnesses being essential for the just decision of the case, the said discretion should not be interfered by this Court. He on this basis supports the order passed by the learned Trial Court.

I have heard learned counsel for the parties and have perused the paper book with their able assistance.

Before considering the respective submissions of learned counsels, it would be apposite to extract Section 311 Cr.P.C., which is reproduced as 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.”***

A perusal of the above quoted provision would manifest that the Court is vested with a broad and wholesome power to summon and examine or recall and re-examine any material witness at any stage, if his/her evidence appears to be essential to the Court for the just decision of the case.

The object, scope and ambit of Section 311 Cr.P.C. is no more *res integra*. The Hon'ble Apex Court in case of “**Zahira Habibullah Sheikh (5) Vs. State of Gujarat**” (2006) 3 SCC 374, while dealing with the object underlying Section 311 Cr.P.C. held as under:-

*“27. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311, the significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that whereas the sections confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.”*

The Hon'ble Apex Court has further explained the role of Court in the following terms:-

*“43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidence-collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is no relevant, is no unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective, i.e. truth, is arrive at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.”*

Further, the Hon'ble Apex Court has stressed upon the wide ambit of Section 311 Cr.P.C. which allows the power to be exercised at any stage and held that:-

*“44. The power of the court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The section consists of two parts, i.e.: (i) giving a discretion to the court to*

*examine the witness at any stage, and (ii) the mandatory portion which compels the court to examine a witness if his evidence appears to be essential to the just decision of the court. Though the discretion given to the court is very wide, the very width requires a corresponding caution. In “**Mohanlal ShamjiSoni Vs. Union of India**” (1991) Supp (1) SCC 271, this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, “any court”, “at any stage”, or “any enquiry or trial or other proceedings”, “any person” and “any such person” clearly spells out that the section has expressed in the widest-possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the section does not allow any discretion but obligates and binds the court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, “essential” to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.*

*(emphasis added)*”

In the light of above settled law, the stage is ripe to consider the submission made by learned counsel for the petitioner that after closing of the prosecution as well as defence evidence, it was impermissible for the trial court to exercise its power under Section 311 Cr.P.C., in order to summon Dr. Usha Dhingra and Dr. Usha Dalal. Suffice it to say that a perusal of Section 311 Cr.P.C. and the laws laid down on this issue leave no manner of doubt that the Court can exercise power under Section 311 Cr.P.C. at any stage of the proceedings for the just decision of the case.

Recently, the Hon'ble Apex Court in judgment dated 08.08.2022, passed in Criminal Appeal No.1021 of 2022 titled as “**Varsha Garg Vs. State of Madhya Pradesh and others**”, in paragraphs No.31 and 32 thereof, observed as under:-

*“31. Summing up the position as it obtained from various decisions of this Court, namely **Rameshwar Dayal v. State of U.P. (1978) 2 SCC 518, State of W.B. v. Tulsidas Mundhra (1963) Supp 1 SCR 1, Jamatraj Kewalji Govani v. State of Maharashtra (1967) 3 SCR 415, Masalti v. State of U.P. (1964) 8 SCR 133, Rajeswar Prosad Misra v. State of W.B. (1966) 1 SCR 178 and R.B. Mithani v. State of Maharashtra (1971) 1 SCC 523, the Court held:***

*“27. The principle of law that emerges from the views expressed by this Court in the above decisions is that the criminal court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of*

*any person which would depend on the fact and circumstances of each case.”*

*32. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.”*

From the above discussion, it is manifest that the power under section 311 of Cr.P.C. can be exercised at any stage of the proceedings for the just decision of the case and even if the evidence of both sides is closed. Now coming to the submission on behalf of the Petitioner that the examination of Dr. Usha Dhingra and Dr. Usha Dalal would not serve any useful purpose at this stage of the trial; it would be apposite to refer to a judgment rendered by the Hon'ble Apex Court in “***Rohtash Kumar v. State of Haryana***” 2013(3) R.C.R. (Criminal) 42; wherein the following observation was made: -

**“17. Thus, the prosecution is not bound to examine all the cited witnesses, and it can drop witnesses to avoid multiplicity or plurality of witnesses. The accused can also examine the cited, but not examined witnesses, if he so desires, in his defence. It is the discretion of the prosecutor to tender the witnesses to prove the case of the prosecution and "the court will not interfere with the exercise of that discretion unless, perhaps, it can be shown that the prosecution has been influenced by some**

*oblique motive." In an extra-ordinary situation, if the court comes to the conclusion that a material witness has been withheld, it can draw an adverse inference against the prosecution, as has been provided under Section 114 of the Evidence Act. **Undoubtedly, the public prosecutor must not take the liberty to "pick and choose" his witnesses, as he must be fair to the court, and therefore, to the truth. In a given case, the Court can always examine a witness as a court witness, if it is so warranted in the interests of justice.**"*

In the instant case, learned trial Court, while allowing application under Section 311 Cr.P.C. has observed as under:-

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- x - x - x -

*After giving thoughtful consideration to the rival submissions and on careful perusal of averments put up in the application under Section 311 Cr.P.C., reply filed by the prosecution, the evidence recorded by the witnesses of prosecution, the ratio decidendi laid down in the case law referred, the assistance rendered, it is pertinent to make mention that by way of the present application the learned defence lawyer has sought the indulgence of court for calling and examining Dr. Usha Dhingra of A.P. Jain Hospital, Rajpura to come along with original MLR and complete treatment record alongwith admission summary of patient Ujjagar Singh son of Basanta Ram and for examining Dr. Usha Dalal of Govt. Medical College and Hospital, Section 32, Chandigarh, who had accorded the treatment, on the score that the condition of the patient which was initially observed by the said doctors and treatment accorded has not been brought on file. It is not at all disputed that at the time of admission of Ujjagar Singh, as per the perusal of the documents on the file, who was firstly taken to A.P. Jain Hospital, Rajpura, it has been*

*observed as to the patient being unconscious, pulse was unrecordable, B.P. was also unrecordable and it has further observed as to it being a case of 100% burn injuries. The patient was thereafter referred to GMCH, Sector 32, Chandigarh, over where treatment initially was accorded by Dr. Usha Dalal.*

*It is apt to make mention that as per the provision enshrined under Section 311 Cr.P.C. and the object for which the same has been enacted, it leaves no manner doubt that the same have been enacted in order to enable the court to render the just decision. Where under, any court by exercising its discretionary authority at any stage of inquiry, trial or other proceedings can summon any person as witness or examining any person in attendance though not summoned as a witness or recall or re-examine any person already examined who had expected to able to throw light upon the matter in dispute. The object of the provisions under Section 311 Cr.P.C. as a whole, is to do justice, not only from the point of view of the prosecution and the accused but also from the point of view of the orderly society.*

*It is further pertinent to make mention that provisions under Section 311 Cr.P.C. are manifestly in two parts, in the first part discretion is given to the court and enables it at any stage of any inquiry, trial or other proceedings under the Code to summon anyone as a witness, or to examine any person in the court or to recall and re-examine any person already examined, and the court shall summon said person as a witness. The scope of this section is very wide and if the new evidence appears mandatory and requires the court to take steps mentioned in the provisions, if the new evidence appears to be essential for the just decision of the case.*

*It is apposite to make mention that prosecution has though examined the learned JMIC (PW1) who had recorded the dying declaration and doctor (PW15) who was present at the time of recording of statement of patient Ujjagar Singh, who had given his opinion as to fitness of the patient. But, the vital aspect to be pondered upon is with regard to the summoning of witnesses Dr. Usha Dhingra of A.P. Jain Hospital, Rajpura and Dr. Usha Dalal, who have been cited as witnesses at the time of presenting of supplementary challan at Sr. No.7 and 8 in the list of witnesses. The condition of the patient has been observed initially as to patient being unconscious, the pulse being unrecordable, similarly the blood pressure being unrecordable, the patient had been admitted at 9.20 A.M. and the dying declaration has been recorded at 4.55 P.M. but the said evidence had not been adduced. As per the assistance rendered by learned defence counsel coupled with the ratio decidendi laid down in the case law referred, the court finds merits in the submission put forth by the learned defence counsel. To do real and complete justice, it is rather inevitable to summon both the witnesses Dr. Usha Dhingra, who had examined the patient initially when the patient was taken to A.P. Jain Hospital, Rajpura and Dr. Usha Dalal, who had accorded the treatment at GMCH, Sector 32, Chandigarh. It is not at all disputed that in case the prosecution has cited a witness or it has thereafter not examined, but the court deems it appropriate that the testimony of witness is vital for the just decision of case, then it becomes inevitable to summon the said witness. It is the bounden duty of the court to summon the witness and examine him to do complete justice. The ratio decidendi laid down in case law referred by learned defence counsel is squarely*

*applicable to the facts of the present case. In that case, two witnesses cited by the prosecution, who had not been examined, thereafter an application was moved by the defence side and the said witnesses were summoned as court witnesses. Thus, there is considerable merits in the submissions put forth by learned counsel for accused. Application is hereby allowed. Both the witnesses are ordered to be summoned so that the condition which was observed of the patient Ujjagar Singh by Dr. Usha Dhingra of A.P. Jain Hospital, Rajpura can be taken glance of and further what was the condition of the patient from the time patient was initially taken at A.P. Jain Hospital, Rajpura and then referred to GMCH, Sector 32, Chandigarh and what were the parameters thereof towards the consciousness, pulse rate, blood pressure and whether the condition of patient had improved upon or it had been deteriorated? Prosecution witnesses Dr. Usha Dhingra and Dr. Usha Dalal be summoned as witnesses for 07.11.2022.*

*- x - x - x -"*

In the light of the above position in law, when the facts of the present case are taken into consideration, learned Trial Court was fully justified in allowing the application under Section 311 Cr.P.C., especially when Dr. Usha Dhingra and Dr. Usha Dalal were cited as witnesses in the supplementary challan at Serial Nos.7 and 8 in the list of witnesses, but were not examined for the reasons best known to the prosecution. Dr. Usha Dhingra is stated to have examined the patient initially when the patient was taken to A.P. Jain Hospital, Rajpura and Dr. Usha Dalal is stated to have attended to the patient at GMCH, Sector 32, Chandigarh.

The object of the Court is to discover truth. Section 311 of the Code is one of such provisions of the Code which empowers the Court at

any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or to examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word 'shall'. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words 'essential to the just decision of the case' are the key words. In the instant case, learned Trial Court has recorded its satisfaction to the effect that to do real and complete justice, it is inevitable to summon both the witnesses, i.e. Dr. Usha Dhingra and Dr. Usha Dalal, for the just decision of case.

Even the submission that the application under Section 311 Cr.P.C. was filed as a ploy to delay the trial; is also without any merit. In ***“Hoffman Andreas v. Inspector of Customs, Amritsar, (2000) 10 SCC 430”*** Hon'ble Apex Court observed that grant of fairest opportunity to the accused to prove his innocence was the object of every fair trial. Reference can be made to the following passage:

*"In such circumstances, if the new Counsel thought to have the material witnesses further examined, the Court could adopt latitude and a liberal view in the interest of justice, particularly when the Court has unbridled powers in the matter as enshrined in Section 311 of the Code. After all the trial is basically for the prisoners and courts should afford the opportunity to them in the fairest manner possible."*

Still further, a three-Judge Bench of the Hon'ble Supreme Court in ***“Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria through LRs., 2012(2) RCR (Civil) 441”*** observed that discovery of the

truth is the essential purpose of any trial or enquiry. A timely reminder of that solemn duty was given, in the following words:

*"What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice."*

In "**P. Sanjeeva Rao v. State of A.P, 2012(3) R.C.R. (Criminal) 653**"; the Hon'ble Apex Court held as under: -

*Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself.*

In the light of the above settled law, there is no force in the submission of the counsel for the Petitioner that allowing of the application under Section 311 Cr.P.C. would delay the trial.

No other point has been urged.

In view of the aforementioned facts and circumstances and also the settled principles of law, I do not find any illegality or perversity in the findings recorded by the learned Trial Court. The instant petition is bereft of any merit and the same is accordingly dismissed. Impugned order dated 17.10.2022 (Annexure P-1) passed by the learned Judge, Special Court, Patiala, is upheld.

**11.11.2022**

*Apurva*

**(HARSH BUNGER)  
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No