

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

CRM-M-3473 of 2023(O&M)

Date of Decision: 23.01.2023

Gaje Singh & Ors.

...Petitioners

Versus

State of Haryana & Anr.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Sanjiv Kumar Aggarwal, Advocate
 For the petitioner.**

Mr. Naveen Kumar Sheoran, Addl. AG Haryana.

KARAMJIT SINGH, J.

The present petition has been filed by the petitioners seeking quashing of order dated 13.01.2023 (Annexure P-1) whereby the application filed by the petitioners under Section 311 Cr.P.C. to recall and re-examine complainant Ishwar Singh, Dharam Pal injured and Naseeb injured, has been dismissed by the Court of learned Additional Sessions Judge, Kurukshetra in Sessions Case No. SC/22/ 2016 pertaining to FIR No. 102 dated 02.06.2012 under Sections 148, 149, 323, 324, 506 IPC (Sections 326, 307, 452, 302 IPC added lateron), Police Station Kurukshetra University, District Kurukshetra.

The counsel for the petitioners submits that during the trial aforesaid prosecution witnesses are examined and the copies of their testimonies are Annexure P-3, Annexure P-4 and Annexure P-5 respectively and they were also cross-examined by the defence counsel. However, thereafter when the case was fixed for defence evidence the aforesaid

prosecution witnesses gave their affidavits before the Panchayat of the village and in the said affidavits they stated that their testimonies are not based on actual facts and in reality as the incident had taken place in the darkness during the night time, they failed to recognize the assailants and the concerned affidavits are Annexures P-6 to P-8. The counsel for the petitioners further submits that immediately after the real facts were brought to the notice of the co-villagers by the complainant and injured witnesses, the petitioners/ accused filed an application under Section 311 Cr.P.C. in order to bring to the notice of the trial Court, the true facts. However, the trial Court dismissed the said application vide order Annexure P-1. The counsel for the petitioners while relying upon the judgment of this Court in **Baljit & Anr. Vs. State of Haryana & Anr. reported in 2009(2) RCR(Cr1.) 178** submits that prosecution witnesses can be recalled by the accused who voluntarily wants to withdraw from their testimonies as the same would serve ends of justice. The counsel for the petitioners further submits that in Baljit's case (supra) under the similar circumstances, this Court allowed to recall the material prosecution witnesses for further cross examination. So, prayer is made that the present petition be also allowed as the further cross-examination of aforesaid witnesses is necessary for the just decision of the case.

The State counsel who is having advance notice of the petition apprised the Court that at present the case is fixed for defence evidence and at this stage no permission can be given to further cross-examine the complainant and injured eye-witnesses even if the said witnesses have given

certain affidavits in favour of the petitioners with regard to their innocence. So, prayer is made that present petition be dismissed.

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

Undisputedly, in the present case now the trial is at its fag end. During the trial, complainant and injured witnesses were examined in chief and also cross-examined at length by the defence counsel as is evident from Annexure P-3 to Annexure P-5 and their testimonies concluded in 2017 and the application under Section 311 Cr.P.C. to recall them for their further cross-examination is filed on 10.01.2023.

This Court is of the view that the said application was rightly dismissed by the trial Court vide order Annexure P-1 for the following reasons:-

In the instant case, the complainant and injured witnesses were examined in 2017 and application under Section 311 Cr.P.C. is filed after a gap of about 05 years and there is nothing on the record to show that at the time of recording of the said depositions, the aforesaid material witnesses were under pressure or threat. Also, the petitioners have failed to give any reason for the delay in filing of the application under Section 311 Cr.P.C.

The object of the provision of Section 311 Cr.P.C. is to do justice and this power has to be exercised only for strong and valid reasons and not as a matter of course. The discretion has to be exercised judiciously to prevent failure of justice. However, it appears that now the prosecution witnesses have been won over by the petitioners and that is why under the

garb of further cross-examination, they want to retract from their earlier statements made before the police as well as during the trial and only for that oblique purpose the petitioners have invoked the provision of Section 311 Cr.P.C. The petitioners have also failed to prove that the further cross-examination of the concerned prosecution witnesses is necessary for the just decision of the case.

The present case is squarely covered by the judgment of the Hon'ble Supreme Court in **Ratanlal Vs. Prahlad Jat & Ors.** reported in **2017(4) RCR(Crl.) 410**, wherein also the application moved under Section 311 Cr.P.C. for recalling of witnesses for re-examination under the similar circumstances was declined.

In view of the above, the counsel for petitioner cannot take any benefit of the judgment passed in Baljit's case (supra).

For the foregoing reasons, this Court do not find any illegality in the impugned order. Accordingly, the present petition is hereby dismissed being devoid of merits and the trial Court should make sincere efforts to dispose of the trial as expeditiously as possible.

23.01.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No