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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-6626-2023

Date of decision : 08.02.2023

Vikalp Saini

...Petitioner

Vs.

Mahender Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Peeush Gagneja Advocate
for the petitioner.

DEEPAK MANCHANDA, J.

The instant petition has been filed under Section 482 Cr.P.C for quashing of the order dated 02.11.2022 (Annexure P-3) passed by Judicial Magistrate First Class, Hisar, whereby the trial Court has allowed the application filed by complainant/respondent under Section 311 Cr.P.C for summoning and examining the witnesses by way of additional evidence along with all subsequent proceedings thereon.

Learned counsel for the petitioner contends that the impugned order is not sustainable in the eyes of law and the same deserves to be set aside as the witnesses being sought to be examined by the complainant/respondent were neither named nor were examined in preliminary evidence. Moreover, the application is not supported by any affidavit, which was mandatory. Learned counsel further contends that the matter was never compromised and all the witnesses mentioned in the complaint as well as in the application and are known persons of the complainant/respondent and by way of aforementioned

application filed under Section 311 Cr.P.C, complainant/respondent is trying to prove his false case against the petitioner. He also submits that there is no necessity to summon the witnesses and the only object is to misuse the entries of the accounts and details which would ultimately benefit the complainant/respondent. Further, an application under Section 311 Cr.P.C must not be allowed to fill up the lacuna in case of prosecution or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence, of the accused or to give an unfair advantage to the complainant/respondent, and by allowing the said application, a fresh trial will be initiated just to change the nature of the case presented by the complainant/respondent. Therefore, the trial Court should have exercised its power under Section 311 Cr.P.C with great caution and circumspection, which has not been used/done.

I have heard the learned counsel for the petitioner and have gone through the case file.

The only question, requires adjudication in the present petition is whether the trial Court has rightly exercised its power under Section 311 Cr.P.C by allowing the application of the respondent/complainant to examine the proposed witnesses as mentioned in para No.3 of the application as his additional evidence.

Undoubtedly, Section 311 Cr. P. C. has been enacted to enable the Court to find the truth and render a just decision, where 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 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.

The Karnataka High Court in case of **Sr. H. Suresh vs. S.**

H.Prema, 2022 (2) NIJ, 525 has held as under :-

9. *The fact remains that the learned counsel appearing for the petitioner - accused has not been able to cross-examine the complainant at any point in time in the proceeding. Therefore, it would become a case where there is no cross-examination permitted to the petitioner and result in miscarriage of justice. Since the petitioner is the accused, all opportunity to the accused to protect himself or defend himself should be granted, this is the purport of Section 311 of the Cr.P.C. Section 311 of the Cr.P.C. mandates that the application can be preferred at any stage of proceedings. It is apposite to refer to the judgment of the Apex Court in the case of V.N.PATIL V. K. NIRANJAN KUMARI, wherein the Apex Court holds as follows:*

"13. The scope of Section 311 Cr.P.C. which is relevant for the present purpose is reproduced hereunder:

"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 reexamine (2021) 3 SCC 661 any person already examined; and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case."

14. The object underlying Section 311 CrPC 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 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 the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said "wider the power, greater is the necessity of caution while exercise of judicious discretion".

15. The principles related to the exercise of the power under Section 311 CrPC have been well settled by this Court in Vijay Kumar v. State of U.P. [Vijay Kumar v. State of U.P., (2011) 8 SCC 136 : (2011) 3 SCC (Cri) 371 : (2012) 1 SCC (L&S) 240] : (SCC p. 141, para 17) "

17. Though [Section 311](#) confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under [Section 311](#) has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously. Before directing the learned Special Judge to examine Smt Ruchi Saxena as a court witness, the High Court did not examine the reasons assigned by the learned Special Judge as to why it was not necessary to examine her as a court witness and has given the impugned direction without assigning any reason."

16. This principle has been further reiterated in *Mannan Shaikh v. State of W.B.* [*Mannan Shaikh v. State of W.B.*, (2014) 13 SCC 59 : (2014) 5 SCC (Cri) 547] and thereafter in *Ratanlal v. Prahlad Jat* [*Ratanlal v. Prahlad Jat*, (2017) 9 SCC 340 : (2017) 3 SCC (Cri) 729] and *Swapan Kumar Chatterjee v. CBI* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] . The relevant paragraphs of *Swapan Kumar Chatterjee* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] are as under: (*Swapan Kumar Chatterjee case* [*Swapan Kumar Chatterjee v. CBI*, (2019) 14 SCC 328 : (2019) 4 SCC (Cri) 839] , SCC p. 331, paras 10-11).

10. The first part of this section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine, or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.

11. It is well settled that the power conferred under [Section 311](#) should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law."

17. The aim of every court is to discover the truth. [Section 311](#) CrPC is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under [Section 311](#) Cr.P.C. has to be

exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice."

The Apex Court in its judgment rendered in “**Varsha Garg vs. The State of Madhya Pradesh and Others**”, 2022 (4) RCR (Criminal) 328 has also observed the wide ambit of Section 311, which allows the power to be exercised at any stage and held that :

43. The Court while reiterating the principle enunciated in Mohanlal Shamji Soni (supra) stressed upon the wide ambit of Section 311 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 vs. Union of India**, this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as, 'any court' or '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 judiciously 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.”*

In view of the above discussion, this Court is not inclined to

interfere with the order dated 02.11.2022 (Annexure P-3) passed by the trial Court. Moreover, cross-examination of the complainant has not been conducted so far and no prejudice will be caused to the accused, if proposed witnesses are summoned to examine by the complainant in his additional evidence as he will get an opportunity to cross-examine them.

Accordingly, present petition is dismissed.

(DEEPAK MANCHANDA)
JUDGE

08.02.2023

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No