

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

CRM-M-5980-2023 (O&M)

CRM-9657-2023

CRM-9666-2023

Date of Decision: 01.03.2023

HARBHAJAN KAUR

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Tejinder Pal Singh, Advocate
for the petitioner.

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

HARSH BUNGER, J.

CRM-9666-2023

This is an application for placing on record the copies of
Zimni orders as Annexure A-1.

Criminal Misc. Application is allowed as prayed for. Copies of
Zimni orders as Annexure A-1 are taken on record, subject to all just
exceptions.

CRM-9657-2023

This is an application for preponing the main case, which is
pending for 19.04.2023.

For the reasons stated in the application, the same is allowed, as
prayed for, and the main case is taken up on Board today itself.

CRM-M-5980-2023

The petitioner has filed this petition under Section 482 of Code of Criminal Procedure, for quashing of impugned order dated 09.01.2023 (Annexure P-4) passed by the learned Judicial Magistrate Ist Class, Sunam in Complaint case No.61 of 2016 titled as ***Harbhajan Kaur vs Gurdeep Singh*** under Section 365 read with Section 34 of the Indian Penal Code, whereby, the application filed under Section 311 of the Code of Criminal Procedure has been dismissed.

Succinctly, the petitioner-complainant's husband Daljit Singh had left the home on 14.12.2008 for attending the marriage of one Lovely son of Joginder Singh at Sardar Palace in Village Chhajli, at about 11:00 a.m., on his motor-cycle bearing Registration No.PB-13M-1592 (make 'Boxer', colour Red). Since the petitioner-complainant's husband did not reach home even on the next day, accordingly, she tried to talk to him on his mobile however, the same was switched off. Thereafter, the petitioner-complainant called her brothers namely, Mukhtiar Singh and Hoshiar Singh and they searched the petitioner's husband and while searching, they found her husband's motor-cycle parked at Sunam Bus Stand. Thereafter, the petitioner-complainant got lodged DDR No.7 dated 19.12.2008 at Police Station Lehra for her missing husband. It appears that Incharge of the concerned Police Station searched the call details of petitioner's husband and most of the calls were pertaining to phone No.98787-66130 (belonging to one Gurdeep Singh son of Gurdev Singh) and 92563-27859 (belonging to one Baljit Singh son of Jethu Singh). Thereafter, the petitioner approached the higher authorities and Human Rights Commission Punjab, Chandigarh, who issued an office letter No.2179/18/09/PSHRC and sent to Additional

Director General of Police, Crime Punjab, Chandigarh, who further sent the complaint to Superintendent of Police Crime Patiala, Zone Patiala for investigation. Accordingly, Inspector Ajmer Singh, Office Crime, Superintendent of Police Crime Patiala, Zone Patiala after completing the investigation on the complaint, registered a case vide FIR No.15 dated 02.02.2011 under Section 365 read with Section 34 of the Indian Penal Code at Police Station Dharamgarh against accused persons/respondents No.2 and 3.

It further appears that the above-said FIR No.15 dated 02.02.2011 was investigated into and a cancellation report was prepared and submitted before the concerned Court. Thereafter, the petitioner has filed the complaint/protest petition against the cancellation report before the Judicial Magistrate Ist Class, Sunam.

A perusal of the paper-book reveals that the date was fixed for evidence of the petitioner-complainant in September-2016 and the evidence of the petitioner-complainant came to be closed on 16.12.2022 by the counsel for the petitioner-complainant vide separate statement.

After the closure of evidence of the petitioner-complainant on 16.12.2022, she filed an application dated 09.01.2023 under Section 311 of the Code of the Criminal Procedure, for leading additional evidence. Para no.2 of the application moved by the petitioner-complainant for leading additional evidence reads as under :-

“2. That in the said complaint wants for leading additional evidence a) concerned clerk of Human Rights Commissioner, Punjab Chandigarh regarding complaint No:2179/18/09/PSHRC which was given by complainant regarding taking action against the accused, b) concerned Clerk SP Crime Patiala Zone Patiala regarding complaint

No.2179/18/09/PSHRC Investigation Report and other related documents c) concerned Clerk SSP Sangrur regarding Complaint No.2179/18/09/PSHRC and order dated 31.01.2011 and other relevant documents wants to produce which have been mistakenly omitted earlier.”

The above-said application for leading additional evidence has been dismissed by the Court of learned Judicial Magistrate Ist Class, Sunam vide impugned order dated 09.01.2023 (Annexure P-4) by observing that the evidence of the complainant was closed by her counsel vide separate statement on 16.12.2022 after availing ample opportunities to produce the said documents in her evidence and also that the complainant had effective opportunities to examine the said witnesses from 28.09.2016 till 16.12.2022 i.e. more than six years when adjournments were sought for evidence of the complainant. It has further been observed by the Judicial Magistrate Ist Class, Sunam that the complainant had failed to mention any compelling reason for not examining the said witnesses for a period of more than six years.

In the afore-mentioned circumstances, the present petition has been filed before this Court.

I have heard learned counsel for the petitioner and perused the paper book with his able assistance.

Section 311 of the Code of Criminal Procedure reads as under:-

"311. Power to summon material witness, or examine person present:- Any court may, at any stage of any inquiry, trial or other proceedings under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness, or re-call 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 perusal of the Section aforesaid clearly indicates that the Section aforesaid has two limbs, first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an inquiry, trial or proceedings under the Code:-

(a) to summon any one as a witness; or to examine any person present in Court; or

(b) to recall and re-examine any person whose evidence has already been recorded.

On the other hand, the second part is mandatory and compels the Court to take any of the above steps if the new evidence appears to it essential to the just decision of the case. In ***Iddar& others v. Aabida& another, 2007 (3)R.C.R. (Criminal) 909***, Hon'ble the Supreme Court held that this is supplementary provision enabling and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of these witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means.

In the instant case, a perusal of application under Section 311 of the Code of Criminal Procedure (Annexure P-3) would reveal that the

complainant wants to lead the following additional evidence :-

- (i) *Concerned clerk of Human Rights Commissioner, Punjab Chandigarh regarding complaint No.2179/18/09/PSHRC, which was given by complainant regarding taking action against the accused;*
- (ii) *Concerned Clerk SP Crime Patiala Zone Patiala regarding Complaint No.2179/18/09/PSHRC Investigation Report and other related documents;*
- (iii) *Concerned Clerk SSP Sangrur regarding Complaint No.2179/18/09/PSHRC and order dated 31.01.2011 and other relevant documents, which have been mistakenly omitted earlier.”*

A perusal of the complaint/protest petition filed by the petitioner-complainant would clearly indicate that the averments regarding the Punjab Human Rights Commission's letter No.2179/18/09/PSHRC; duly finds mention in para No.7 of the complaint, which reads as under :-

“7. That my complaint on dated 18.02.2009, Human Rights Commissioner Punjab Chandigarh through his office letter no.2179/18/09/PSHRC was sent to Hon'ble ADGP Sahib Crime Punjab, Chandigarh who has sent the complaint to SP Crime Patiala, Zone Patiala for investigation. Inspector Ajmer Singh Office Crime, SP Crime Patiala, Zone Patiala has done the investigation on the complaint. Inspector Ajmer Singh has written in his investigation report that on my investigation so far, I have come to the conclusion that the applicant's husband Daljit Singh was missing from his home since 14.12.2008. Regarding his missing that the applicant have raised doubts on the accused Gurdeep Singh and Baljit Singh, but Gurdeep Singh and Baljit Singh does not believe for the allegations against them to be true but they used to hesitate to reply these allegation, which they are not given satisfactory reply. During investigation he revealed

that missing person Daljit Singh was most close to Gurdeep Singh and Baljit Singh. From the phone call details and statement of Hoshiar Singh and as also per on my statement found that on the day of missing Daljit Singh most of the calls were with Baljit Singh and Gurdeep Singh dated 14.12.2008 and dated 15.12.2008. Apart from this Baljit Singh and Gurdeep Singh admitted during investigation that they have received a call from Daljit Singh and he met Gurdeep Singh on dated 14.12.2008 at Beretta Kanchian. Apart from this Gurdeep Singh open the account of Baljit Singh's at HDFC bank branch Kulrian which were located in the area outside of the village. During investigation this fact is admitted by Sh. Sita Ram Bareeta and Hoshiar Singh in their statement. Gurdeep Singh and Daljit Singh and his family members have oftenly visited to religious places like Naina Devi etc. and also frequently visited Daljit Singh along with his children at Kota (Rajasthan). This was admitted by Gurdeep Singh during the investigation. This has also been admitted during investigation is that the applicant and the above said Hoshiar Singh in their statements. Gurdeep Singh oftenly used to say to Daljit Singh that arrange the money and we will trading for buffaloes sales etc. During the investigation this fact has been admitted in the statements of Kamaljit Singh and Hoshiar Singh. Apart from this there is no information that Daljit Singh has received the amount after selling the land, it is clear that Daljit Singh has been in contact with Gurdeep Singh and Baljit Singh after his missing. The applicant Harbhajan Kaur's statement regarding Daljit Singh's missing seems to be correct against the above said Gurdeep Singh and Baljit Singh. Therefore, the investigating officer prepared a report to take legal action against the accused and sent it to the Senior Police Superintendent, Sangrur. Thus, the investigation report of

Ajmer Singh SP Crime Patiala Zone Patiala through ADGP Sahib Crime Punjab Chandigarh issued from his office letter no.2179/18/09/PSHRC by sending a copy of letter No.24/Reader/AP Crime Patiala of Superintendent of Police Crime Patiala Zone Patiala to Harbhajan Kaur wife of Daljit Singh resident of Daska District Sangrur and to instruct that further as per the suggestion given in this investigation report and information should be sent to the concerned office. ADGP Sahib Crime Punjab, Chandigarh has ordered to SSP Sahib Sangrur that "SHO Dharamgarh to register the case and investigate. SD/- Harcharan Singh Buller SSP Sahib Sangrur on dated 31.01.11. On receiving the orders from SSP Sahib Sangrur, SI Sukhchain Singh SHO, Police Station Dharamgarh has registered the FIR No.15 dated 02.02.2011 under Section 365/34 IPC Police Station Dharamgarh against the accused."

Once, the afore-mentioned letter was well within the knowledge of the petitioner-complainant and her evidence is pending since September-2016 until 16.12.2022 when the counsel for the petitioner-complainant closed her evidence by recording a separate statement, indeed ample opportunities have been provided by the concerned Court to lead evidence. It is not the case of the petitioner-complainant that the said letter of Punjab Human Rights Commission was not within her knowledge and neither she was aware as to how the said letter was forwarded to the different police authorities for taking action whereupon, the case FIR No.15 dated 02.02.2011 was registered. Rather, perusal of the *Zimini* orders, which have been placed on record as Annexure A-1 vide **CRM-9666-2023** would clearly suggest that on many occasions, pre-emptory orders were also passed while granting last opportunity to the petitioner-complainant to complete the evidence by recording that upon failure to lead evidence, the evidence of

the complainant shall be deemed to be closed by order. One such order dated 13.06.2017 reads as under :-

“ Present : Complainant with counsel.

No evidence of the complainant is present. Adjournment sought, which is highly opposed. However, in the interest of justice, last opportunity is granted to complainant evidence on 28.07.2017, failing which evidence of the complainant deemed to be closed by order.”

Be that as it may, ample opportunities were granted to the petitioner-complainant to lead her evidence, however, she failed to do so despite her evidence being pending for long six years. The learned trial Court has rightly rejected the application under Section 311 of the Code of Criminal Procedure, by observing that no compelling reasons have been mentioned by the petitioner-complainant for not examining the said witnesses for the period of six years.

It is well settled law that the power under Section 311 of the Code of Criminal Procedure is although wide enough, however, the same is not to be exercised casually and as a mere asking of the party. Section 311 of the Code of Criminal Procedure is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice.

In view of the above, I do not find any justification to interfere in the impugned order dated 09.01.2023 (Annexure P-4) passed by Judicial Magistrate Ist Class, Sunam, whereby, the application under Section 311 of the Code of Criminal Procedure filed by the petitioner for leading additional

evidence has been dismissed.

Hence, the instant petition is dismissed.

March 01, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No