

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-11436-2017 (O&M)

Date of Decision: 29.3.2023

Reserved on : 27.2.2023.

Sham Lal Thukral and another

....Petitioners

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Baltej Singh Sidhu, Sr. Advocate with
Mr. Divij Dutt, Advocate,
for the petitioners.

Mr. C.L.Pawar, Addl. AG, Punjab.

Mr. Jagbir Singh Brar, Advocate,
for the complainant.

KARAMJIT SINGH, J.

The petitioners/accused have filed the present petition seeking quashing of orders dated 8.12.2016 (Annexure P-12) passed by the Court of Judicial Magistrate, 1st Class, Bathinda whereby the application moved by the prosecution/complainant under Section 311 Cr.P.C. was allowed in criminal case having FIR No.473 dated 6.8.2005 registered under Sections 420, 465, 380, 467, 468, 471, 477, 448, 427, 270, 34 IPC at Police Station Kotwali, Bathinda and order dated 3.3.2017 (Annexure P-14) passed by the Court of Additional Sessions Judge, Bathinda whereby the revision petition filed by the petitioners/accused against the aforesaid order (Annexure P-12) passed by the Court of Judicial Magistrate, 1st Class, Bathinda is dismissed.

Brief facts of the case are that complainant-Kartar Singh lodged complaint with the police authorities to take action against the accused

persons in accordance with law. On the basis of the said complaint, FIR No.473 dated 6.8.2005 under Sections 420, 465, 380, 467, 468, 471, 477, 448, 427, 270, 34 IPC at Police Station Kotwali, Bathinda was registered against the petitioners and some other persons. In the FIR it has been inter alia alleged that there is a common wall between the adjoining properties of both the parties and petitioners are running nursing home in their property. As per complainant the width of common wall was reduced by the petitioners. There are also allegations that the complainant demolished his old building and after obtaining requisite approval from the concerned departments, reconstructed a new building in his own plot but the petitioners and staff of nursing home tried to obstruct said construction by filing civil suits and complaints based on false and fake documents. That even civil writ petition was also filed against the complainant, which was later on withdrawn. It is further alleged in the FIR that the aforesaid complaints were found to be false by the police and resultantly kalandra under Section 182 IPC was filed by the police authorities against the petitioners.

After completion of investigation both the petitioners were challaned by the police and the trial Court framed charges against them but the petitioners did not plead guilty and the trial was commenced.

During trial, the prosecution filed an application under Section 311 of Cr.P.C. to summon the following witnesses along with the concerned record relating of aforementioned previous litigation: -

- i. Record Keeper, Civil Judge, Senior Division, Bathinda along with file suit No.548 of 2003 titled as Dr. Sham Lal Thukral Vs. Kartar Singh, Court of Sh. H.S.Dhaliwal, Civil Judge, Senior Division, Bathinda decided on dated 17.12.2003

and file of civil suit No.827 of 2.11.2004 RT No.147 dated 1.8.2014, titled as Sham Lal Vs. Kartar Singh decided on 30.5.2015 by the court of Ms Pushpa Rani Civil Judge, Senior Division, Bathinda.

ii. Concerned Criminal record keeper, Chief Judicial Magistrate, Bathinda along with file No.75 dated 6.4.2004 of Kalandara 182 IPC titled State Vs. Dr. Sham Lal Thukral.

iii. Concerned record keeper, District & Sessions Judge, Bathinda along with file Civil appeal Dr. Sham Lal Thukral Vs. Kartar Singh court of Sh. D.S.Malwai, Addl. District Bathinda, dismissed as withdrawn on dated 15.12.2003 and judicial file of Revision file No.23 decided on 24.12.2005 titled as Kartar Singh Vs. Dr. Sham Lal and others and Criminal Revision No.1 dated 25.9.2005 RT No.16 dated 1.10.2005 decided on 11.3.2006 court of Sh. G.S.Sandhu, Fast Track Court, Bathinda titled Dr. Sham Lal Vs. State of Punjab and Civil Appeal No.46 dated 23.7.2015, CIS No.CA 252 of 2015 decided on 4.3.2016 titled as Dr. Sham Lal Vs. Kartar Singh.

iv. Concerned officer of record room, Punjab & Haryana High Court, Chandigarh, along with file C.W.P. 19889 of 2003 PIL-CM No.20747 of 2005 titled as Kulwant Kaur Vs. State of Punjab and others, disposed off on March 1, 2016 from the Hon'ble Court of Hon'ble Mr. Justice Sh. D.K. Jain and Hon'ble Mr. Justice Sh. D.K. Jain and Hon'ble Mr. Justice Surya Kant, Judge, Punjab and Haryana High Court, Chandigarh.”

The said application was contested by the petitioners who filed written reply. After hearing both the parties, the learned trial Court allowed the said application vide order dated 8.12.2016 (Annexure P-12). The petitioners being aggrieved, challenged the said order before the revisional Court. However, the revision petition filed by the petitioners was also

dismissed by the Court of Additional Sessions Judge, Bathinda vide order dated 3.3.2017 (Annexure P-14). The petitioners being still not satisfied, have filed the present petition challenging orders Annexures P-12 and P-14.

Learned Senior Counsel for the petitioners has contended that the prosecution filed application under Section 311 of Cr.P.C. for filling up the lacuna left by the prosecution and the same is not permissible under law. He has further contended that the documents in question were already in existence and the complainant was well aware of the said documents when FIR was got registered by the complainant against the petitioners in the present case. He has further submitted that during investigation, the police failed to take into its possession the concerned documents regarding which, later on, an application under Section 311 Cr.P.C. has been moved by the prosecution. He has further contended that certified copies of the concerned orders passed by the Court of competent jurisdiction are *per se* admissible and as such, there was no need to summon the concerned record keepers by moving application under Section 311 of Cr.P.C. The counsel for the petitioners has further contended that the relevant documents if any could have been summoned under the provision of Section 91 Cr.P.C. He has further contended that the concerned record keepers having no personal knowledge regarding the contents and nature of the summoned record, their testimonies will be of no relevance and are not necessary for just decision of the case. He has further submitted that the concerned witnesses which the prosecution intends to summon by way of additional evidence by invoking the provisions of Section 311 Cr.P.C are not cited as prosecution witnesses in the challan submitted by the police under Section 173 of Cr.P.C. He has further argued that power under Section 311 of Cr.P.C. should be invoked

by the Court only for strong and valid reasons with great caution only to meet the ends of justice.

Learned Senior counsel for the petitioners while placing reliance upon **Swapan Kumar Chatterjee v. Central Bureau of Investigation** (2019) 14 SCC 328 has submitted that the application under Section 311 of Cr.P.C. filed by the prosecution is mere abuse of the process of law. So, prayer is made that impugned orders Annexures P-12 and P-14 being illegal, cannot be sustained in the eyes of law.

Present petition is opposed by the State counsel as well as counsel for the complainant, both of whom, have supported the impugned orders Annexure P-12 and P-14.

Counsel for the complainant has contended that in the instant case, FIR was registered on the basis of the documents regarding which, the complainant has filed the present application under Section 311 of Cr.P.C. He has further submitted that the record in question is required for just decision of the case and both the Courts below dealt the matter in right perspective. He further contended that the learned Revisional Court relied upon the law laid down by Hon'ble Supreme Court in **Rajendra Prasad v. The Narcotic Cell through its Officer-in-charge, Delhi**; 1999 (3) RCR (Criminal) 440 wherein it has been clearly observed that the Court has power and as such, can allow the production of material and evidence at any stage. Any lapses or mistakes during the conducting of a case cannot be understood as lacuna which Court cannot fill up.

Counsel for the complainant also placed reliance upon **Varsha Garg v. The State of Madhya Pradesh and others**; (2022) AIR (SC) 3707

wherein it has been observed by Hon'ble Supreme Court that power under

Section 311 of Cr.P.C. can be exercised at any stage of trial wherever the Court finds that any evidence is essential for just decision of the case.

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

Admittedly, the application in question was moved by the prosecution under Section 311 of Cr.P.C. during the pendency of the trial to summon the record keepers along with concerned record as has been detailed in the said application. The said application was allowed by the learned trial Court vide order Annexure P-12 and even the revision petition filed against the said order was dismissed by the Court of Additional Sessions Judge, Bathinda vide order Annexure P-14.

FIR in the present case was registered on the basis of complaint lodged by complainant Kartar Singh regarding alleged false documents produced by the petitioners in the previous litigation between the parties. The prosecution intends to produce relevant record of the previous litigation by way of additional evidence. The trial Court while passing order Annexure P-12 has specifically observed that the summoned record is necessary for just decision of the case. Even the Revisional Court while relying upon judgment of the Hon'ble Supreme Court in **Rajendra Prasad's** case (supra) dismissed the revision petition filed by the petitioners against order Annexure P-12. In **Rajendra Prasad's** case (supra), Hon'ble Apex Court observed as follows:-

“8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case but an oversight in the management of the prosecution cannot be treated as irreparable

lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

In **Mannan Sk. and others v. State of West Bengal and another** 2014(13) SCC 59, the Hon’ble Supreme Court held as under:-

“10. The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under [the Code](#) to summon any person as a witness or 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. The court must form an opinion that for the just decision of the case recall or re- examination of the witness is necessary. Since the power is wide it’s exercise has to be done with circumspection. It is trite that wider the power greater is the responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness is for filling-up of a lacuna or it is for just decision of a

case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

In **Godrej Pacific Tech Limited v. Computer Joint India Limited** 2008 (4) Criminal Court Cases 162, the Hon’ble Supreme Court while analyzing the provisions of Section 311 Cr.P.C, observed as under:-

“8. 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 section 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.”

Even in **Swapan Kumar Chatterjee’s** case (supra) which has been relied upon by the counsel for the petitioners, it has been clearly observed that the Court has wide powers under Section 311 Cr.P.C. to

summon the witnesses during trial and the said power should be invoked by the Court to meet the ends of justice.

In the light of the settled law as discussed above, the criminal Court has got vast powers to summon any person in order to produce the relevant documents on record through him. The petitioners have failed to show as to in what manner the summoned record is having no bearing on the instant case or is not relevant for the just decision of the case.

In the instant case, if the concerned record keepers are examined on oath, then the petitioners will get an opportunity to cross-examine them. Thus, no prejudice is going to be caused to the petitioners if the record in question whose detail is given in the application itself, is ordered to be produced by examining the concerned record keepers. The said record being necessary for the just decision of the case, if the prosecution is not allowed to produce the same, prejudice would definitely be caused to the prosecution and further the said additional evidence would help the Court to find out the truth and decide the matter properly.

For the reasons aforementioned the present petition is hereby dismissed being devoid of merits. However, as the criminal case is of year 2006, the trial Court is directed to expedite the trial and dispose of the same preferably within a period of next 6 months.

(KARAMJIT SINGH)
JUDGE

March 29, 2023

Paritosh Kumar

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No