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

CRM-M-11886-2023 (O&M)
Date of Decision: 13.03.2023

NUSRAT

....Petitioner

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Liaqat Ali, Advocate
for the petitioner.

HARSH BUNGER, J. (Oral)

1. The petitioner has filed this petition under Section 482 Cr.P.C seeking quashing of the order dated 24.02.2023 (Annexure P-4) passed by Additional Sessions Judge, Ludhiana in case FIR No.110 dated 17.06.2020 registered under Sections 307, 506, 341, 148 and 149 IPC at Police Station Jodhewal, Ludhiana (Annexure P-1); vide which an application under Section 311 Cr.P.C filed by the complainant has been allowed.

2. The petitioner herein is an accused in the aforesaid case FIR No.110 dated 17.06.2020 (Annexure P-1).

3. During the course of the trial in the abovesaid case, the complainant had filed an application (Annexure P-2) under Section 311 Cr.P.C to examine the witnesses i.e. Sunil Kumar and Karandeep Singh as prosecution witnesses. In the application, the following averments were made:-

2. That the FIR in the present case was registered on the statement of the applicant/complainant regarding the illegalities committed by the accused persons and during

the investigation of the case, the Investigation Officer has joined the brother of the applicant/complainant Karandeep Singh and Sunil Kumar as eye witnesses of the present case and who are the witnesses of the memos also. But inadvertently, the I.O. has not placed on record the statements under Section 161 of the said witnesses.

3. That the evidence of the said witnesses is very much necessary, essential and also required for the just decision of the case. Moreover, the abovesaid witnesses have been duly named in the list of witnesses attached with the challan.

4. That the abovesaid witnesses are most material and important witnesses to prove the case of the applicant/complainant.

4. The above-said application under Section 311 Cr.P.C was contested by the petitioner herein by filing its reply, wherein, it was inter alia objected that the application was not maintainable and the same had been filed only to fill up the lacuna in the case. The remaining averments in the application under Section 311 Cr.P.C were controverted and denied by the petitioner herein.

5. After, considering the rival submissions of the parties, the Court of learned Additional Sessions Judge, Ludhiana vide its order dated 24.02.2023 (Annexure P-4) allowed the application under Section 311 Cr.P.C.

6. Being dis-satisfied with the above-said order dated 24.02.2023 (Annexure P-4), the petitioner has filed this petition before this Court.

7. Learned counsel for the petitioner has submitted that the learned Court below has erred in law and fact in allowing the application under Section 311 Cr.P.C, as Sunil Kumar and Karandeep Singh have no link with the case and the said application under Section 311 Cr.P.C was filed just to

Karandeep Singh were never joined in the investigation nor their statements were recorded under Section 161 Cr.P.C before the Police. Accordingly, it is prayed that the impugned order dated 24.02.2023 (Annexure P-4) be set aside and the application under Section 311 Cr.P.C filed by the complainant be dismissed.

8. I have heard, learned counsel for the petitioner and also perused the paperbook.

9. As regards the contention of learned counsel for the petitioner that the persons sought to be examined by filing application under Section 311 Cr.P.C, namely Sunil Kumar and Karandeep Singh have no concern with the case as they were neither joined in the investigation nor their statements under Section 161 Cr.P.C were recorded. I do not see any merit in the said contention inasmuch as that the learned trial Court has recorded a finding that the names of both these persons namely Sunil Kumar and Karandeep Singh are specifically mentioned at Serial No.2 and 4 of the list of witnesses. It is further observed by the trial Court that Karandeep Singh is shown to be the eye-witness and witness of memo and similarly Sunil Kumar is also shown to be the witness of memo regarding handing over of CD. The learned trial Court has held as under:-

“I have considered the rival submissions and am of the opinion that in the list of witnesses, both Sunil Kumar and Karandeep Singh are specifically mentioned at sr. no.2 and 4. Karandeep Singh is shown to be the eye witness and witness of memo. Sunil Kumar is shown to be the witness of memo regarding handing over of CD. Though statements of these persons are not there on record under Section 161 Cr.PC, but the fact remain that these persons are certainly relevant for throwing proper light about the incident. Statement under Section 161 Cr.PC was desirable. But

nevertheless its absence does not mean that court cannot examine such important witnesses. From the list of witnesses and memos it clearly emerged out that these witnesses can throw proper light about the incident. They are certainly relevant. As per prosecution they are eye witnesses. Let these witnesses be examined in the manner they want to depose about incident, subject to all rights of learned defence counsel regarding cross-examination. As far as veracity and authenticity of these two witnesses are concerned, same shall certainly be subject to adjudication at final decision of the trial. But at this stage prosecution cannot precluded from producing the witnesses which is considered relevant and appropriate. Accordingly the application under Section 311 Cr.PC is allowed. Both the witnesses be produced on the next date of hearing i.e. on 28.02.2023.”

10. A perusal of the aforesaid finding recorded by the learned trial Court would manifest that although the statements under Section 161 Cr.P.C of witnesses namely Sunil Kumar and Karandeep Singh are not there on the record, however, the Court has found that these witnesses can throw proper light on the incident and the said persons have been considered to be relevant being eye-witnesses of the incident. Even otherwise, the petitioner has not demonstrated as to what prejudice shall be caused to the petitioner if the said persons, who are sighted as eyewitness in the list of witnesses, are permitted to be examined. It is not a case where the witness has already been examined and cross-examined and is being sought to be recalled to fill up the lacuna. The trial Court has found the examination of these persons as essential.

11. It is well settled law that it is the duty of the Court to arrive at the truth and subserve the ends of justice. In this regard, reference can be made to the judgment rendered by Hon'ble Supreme court in case of

Iddar & others v. Aabida& another, 2007 (3)R.C.R. (Criminal) 909,

wherein it was held as follows :-

“9. In this context, reference may be made to Section 311 of the Code which reads as follows:

"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."

10. The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code: (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) 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 aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a 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 those 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 and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

11. 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 for 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 Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry.”

13. In view of the abovesaid discussion, I do not find any merit in this petition and the same is accordingly, dismissed.

14. All pending application(s), if any, shall also stand closed.

13.03.2023
Amandeep

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No