

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

114

CRR-695-2023
Date of Decision : 16.03.2023

Amit Khanna

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Shivam Grover, Advocate,
Mr. Akshay Mittal, Advocate
Mr. Ivan Singh Khosa, Advocate
for the petitioner.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition is seeking setting aside of order dated 21.02.2023 whereby Additional Sessions Judge, Gurugram has allowed the application of the prosecution under Section 311 Cr.P.C. to summon the additional witnesses namely Rupali Singh and her father Radhey Shyam.

2. The brief facts of the case are that petitioner solemnised marriage with Bhawna (deceased) in the year 2014. Bhawna committed suicide on 31.7.2018 which resulted into registration of FIR No.561 dated 31.07.2018 under Sections 306, 34 IPC against the petitioner at Police Station Sadar, Gurugram. The police after completing investigation filed its report under Section 173 Cr.P.C. wherein the petitioner was nominated as an accused.

3. The trial Court framed charges and during the course of trial,

the prosecution moved an application under Section 311 Cr.P.C. seeking summoning of additional witnesses namely Rupali Singh and her father Radhey Shyam. The application of the prosecution came up for consideration before the learned ASJ, Gurugram who vide impugned order dated 21.02.2023 allowed the application of the prosecution.

The trial Court has noticed that the petitioner-accused had executed a rent deed with Rupali Singh daughter of Radhey Shyam with respect to 2nd floor of house No.L-203, Shastri Nagar, Merrut. The rent deed during the course of investigation was resumed and made part of *challan*, however, owners of the accommodation were not cited as prosecution witnesses. The trial Court vide impugned order dated 21.02.2023 has formed an opinion that the rent deed is part of investigation and *challan*, however, owners of the accommodation are not cited as witnesses who need to be examined for the just decision of the case.

4. Learned counsel for the petitioner *inter alia* contends that prosecution, despite knowing the existence of lease deed did not cite owners of the accommodation as witnesses and permission to examine both of them as witnesses would amount to changing the entire case of prosecution. The petitioner is charged of commission of offence punishable under Section 306 IPC and examination of alleged witnesses would change the nature of offence. The prosecution at this stage cannot bring new evidence on record and it has no bearing with the charges framed. In support of his contention, learned counsel relied upon judgments of this Court in ***Paramjit Kaur Thandi vs. State of Punjab and others in CRR No.2553 of 2016, decided on 06.03.2019, Om Parkash Chhabra vs. Chand Parkash Chhabra and others in CRM-M-8247-2020, decided on 26.02.2020, Uppal Credit and***

Investment Pvt. Ltd. vs. Ashwani Kumar in CRM-M-15173-2012 decided on 22.03.2016 and Hon'ble Supreme Court in Rajaram Prasad Yadav vs. State of Bihar and another, 2013(14) SCC 461, Natasha Singh vs. CBI (State), 2013 (5) SCC 741 and Pinakin Mahiparay Rawal vs. State of Gujarat, 2013 (10) SCC 48.

5. I have heard the arguments of learned counsel for the petitioner and perused the record.

6. The relevant extracts of the impugned order read as:

“Through the instant application, the applicant/complainant wants to summon witnesses namely Rupali Singh, daughter of Shri Radhey Shyam & Radhey Shyam both residents of L-203, Shastri Nagar, Meerut alongwith the original lease deed. Perusal of the case file indicates that the case is still at the stage of evidence of prosecution. It is submitted that the challan was filed by the police against the accused, in which, the prosecution relied upon certain material documents, already the part of judicial file, including lease deed signed and executed between the accused and one-Rupali Singh daughter of Radhey Shyam resident of L-203, Shastri Nagar, Meerut, vide which, the accused took the second floor of the said house on rent against monthly rent of Rs.6,000/-. During the course of investigation, though the investigating agencies obtained the said lease deed and placed it alongwith the report u/s 173 Cr.P.C., yet inadvertently the said Rupali Singh and her father Radhey Shyam who signed the said lease deed as a witnesses, were not cited as witness in the list of witnesses. Both the persons namely Rupali Singh & Radhey Shyam residents of L-203, Shastri Nagar,

Meerut are not only important and necessary witnesses but also the most crucial/material witnesses as during the investigations, it has come before the investigating agencies that the accused used to stay in the said rented accommodation in Meerut, alongwith a lady, whom he projected as his wife, whereas the deceased never accompanied the accused even for a day to Meerut or any other place and as such both the persons named above are required to be examined to elucidate facts. In such circumstances, for rendering proper justice, the aforesaid witnesses alongwith the original lease deed are called for examination for 17.3.2023. Application in hand is accordingly allowed.”

7. The edifice of the controversy involved in the present case revolves around Section 311 of Cr.P.C. which reads as:

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.

8. Hon’ble Supreme Court time and again has adverted with scope & ambit of Section 311 of Cr.P.C. and power of trial court. Ld. Counsel in support of his contentions has cited above referred judgments which need to be noticed.

8.1 A two-judge Bench of Hon'ble Supreme Court in **Pinakin**

Mahiparay Rawal vs. State of Gujarat, 2013(10) SCC 48 has held:

“23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to “cruelty”, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extramarital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.”

8.2 A two-judge Bench of Hon'ble Supreme Court in **Natasha Singh vs. CBI (State), 2013 (5) SCC 741** has held:

19. The trial court, while entertaining the application filed under Section 311 CrPC, had asked the appellant to provide a brief summary of the nature of evidence that would be provided by the defence witnesses mentioned in the application, and in keeping with this, the appellant had furnished an application stating that the appellant wished to examine one Shri B.B. Sharma who was one of the panchnama witnesses, and who the prosecution had neither listed nor examined in court. Therefore, the appellant wished to examine him in

defence. The second person was Shri S.S. Batra, Company Secretary of the appellant, as he was the best person to provide greater details of the Company of which the appellant is the Director. The third witness was a handwriting expert, and it was necessary for the defence to examine him regarding the correctness of the signatures of the appellant and others, particularly with respect to the signatures of the appellant.

20. Undoubtedly, an application filed under Section 311 CrPC must be allowed if fresh evidence is being produced to facilitate a just decision, however, in the instant case, the learned trial court prejudged the evidence of the witness sought to be examined by the appellant, and thereby caused grave and material prejudice to the appellant as regards her defence, which tantamounts to a flagrant violation of the principles of law governing the production of such evidence in keeping with the provisions of Section 311 CrPC. By doing so, the trial court reached the conclusion that the production of such evidence by the defence was not essential to facilitate a just decision of the case. Such an assumption is wholly misconceived, and is not tenable in law as the accused has every right to adduce evidence in rebuttal of the evidence brought on record by the prosecution. The court must examine whether such additional evidence is necessary to facilitate a just and proper decision of the case. The examination of the handwriting expert may therefore be necessary to rebut the evidence of Rabi Lal Thapa (PW 40), and a request made for his examination ought not to have been rejected on the sole ground that the opinion of the handwriting expert would not be conclusive. In such a situation, the only issue that ought to have been considered by the courts

below, is whether the evidence proposed to be adduced was relevant or not. Identical is the position regarding the panchnama witness, and the court is justified in weighing evidence, only and only once the same has been laid before it and brought on record. Mr B.B. Sharma, thus, may be in a position to depose with respect to whether the documents alleged to have been found, or alleged to have been seized, were actually recovered or not, and therefore, from the point of view of the appellant, his examination might prove to be essential and imperative for facilitating a just decision of the case.

8.3 A two-judge Bench of Hon'ble Supreme Court in **Rajaram Prasad Yadav vs. State of Bihar and another, 2013(14) SCC 461** has held:

“18. Keeping the above principles in mind, when we examine the case on hand, at the very outset, it will have to be stated that the High Court, while passing the impugned order has completely ignored the principal objectives with which the provision under Section 311 Criminal Procedure Code has been brought into the statute book. As rightly argued by the learned counsel for the appellant, at the foremost when the trial was very much in the grip of the trial Court, which had every opportunity to hear the appellant, the State, as well as the second respondent, had not even bothered to verify whether the appellant, who was facing criminal trial was impleaded as a party to the proceedings in the High Court. A perusal of the order discloses that the High Court appears to have passed orders on the very first hearing date, unmindful of the consequences involved. The order does not reflect any of the issues dealt with by the Learned Sessions Judge, while rejecting the application of the respondents in seeking to re-examine PW-9, the second respondent herein. Though orders

could have been passed in this appeal by remitting the matter back to the High Court, having regard to the time factor and since the entire material for passing final orders, are available on record and since all parties were before us, the correctness of the order of the Sessions Judge dated 18.11.2009, can be examined and final orders can be passed one way or the other in the present criminal appeal itself.

19. With that view, when we examine the basic facts, we find them as noted by the learned trial Judge being indisputably contrary to the complaint preferred by the second respondent on 8.7.1999, in the police station in case No. 71/1999, wherein offences under Section 324/307/34 Indian Penal Code were reported alongwith Section 27 of the Arms Act. Based on the report of the doctor, the charge-sheet came to be filed bearing No. 127/99, dated 31.10.1999, under Sections 324/307/34 Indian Penal Code and no charge under Section 27 of the Arms Act was laid. The said case was put to trial and parties were participating. In the course of the trial, the turn of examination of PW- 9, the second respondent came on 16.3.2007, nearly after eight years from the date of occurrence. Second respondent made a categorical statement in his evidence that he never made any statement to the police nor was he beaten on the date of occurrence, nor was he hit by any bullet shot. Further he made a clear statement that the injury sustained by him was due to the fall into the hole dug for constructing a latrine, where some instruments caused the injury sustained by him. He also made a categorical statement that his sons PWs-4 and 5, Babloo and Munna Kumar, were not present at the place of occurrence since one was staying in a hostel in Hulasganj and the other was at Ranchi on the date and time of occurrence, namely, on 07.07.1999, at about 5 p.m. While the said version of the

second respondent was stated to have been recorded by the Court below on 16.3.2007, and the evidence of the prosecution was stated to have been closed on 4.4.2007, the defence evidence seem to have also commenced.

20. In that scenario, the second respondent filed the present application under Section 311 Criminal Procedure Code on 24.8.2007, i.e., nearly after five months after his examination by the trial Court. While filing the said application, the second respondent claimed that his evidence tendered on 16.3.2007, was not out of his own free will and volition, but due to threat and coercion at the instance of the accused persons, including the appellant. It was contended on behalf of the second respondent that the accused persons posed a threat by going to the extent of eliminating him and that such threat was meted out to him on 15.3.2007, when he was kidnapped from his wheat field by the accused, along with two unknown persons.

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23. We find that the factors noted by the trial Court and the conclusion arrived at by it were all appropriate and just, while deciding the application filed under Section 311 Criminal Procedure Code. We do not find any bona fides in the application of the second respondent, while seeking the permission of the Court under Section 311 Criminal Procedure Code for his re-examination by merely alleging that on the earlier occasion he turned hostile under coercion and threat meted out to him at the instance of the appellant and other accused. It was quite apparent that the complaint, which emanated at the instance of the appellant based on the subsequent incident, which took place on 30.5.2007, which resulted in the registration of the FIR in Khizersarai Police Station in case No. 78/2007, seem to have weighed with

the second respondent to come forward with the present application under Section 311 Criminal Procedure Code, by way of an afterthought. If really there was a threat to his life at the instance of the appellant and the other accused, as rightly noted by the Court below, it was not known as to why there was no immediate reference to such coercion and undue influence meted out against him at the instance of the appellant, when he had every opportunity to mention the same to the learned trial Judge or to the police officers or to any prosecution agency. Such an indifferent stance and silence maintained by the second respondent herein and the categorical statement made before the Court below in his evidence as appreciated by the Court below was in the proper perspective, while rejecting the application of the respondents filed under Section 311 Criminal Procedure Code. In our considered opinion, the trial Court, had the opportunity to observe the demeanour of the second respondent, while tendering evidence which persuaded the trial Court to reach the said conclusion and that deserves more credence while examining the correctness of the said order passed by the trial Court.”

8.4 A Co-ordinate Bench of this Court in **Om Parkash Chhabra vs. Chand Parkash Chhabra and others in CRM-M-8247-2020 (decided on 26.02.2020)** has held:

“11. Therefore, the petitioner cannot be permitted to lead additional evidence with reference to the allegations which are not part of the complaint. Even otherwise, the application is filed at the fag end and the alleged agreement need to be proved by leading the evidence which will amount to re-opening of the trial. Even a perusal for the application filed under Section 311 Cr.P.C. With regard to the complainant witnesses is totally vague and nothing has been stated

about the relevancy of the proposed evidence regarding the controversy in dispute.”

9. A two judge Bench of Hon’ble Supreme Court in a recent judgment in **Varsha Garg V. State of M.P. 2022 Live Law (SC) 662** has adverted with the scope and ambit of Section 311 of Cr.P.C. and powers of Court. Hon’ble Apex Court after considering its plethora of previous judgments has held that application under Section 311 Cr.P.C. cannot be dismissed on the ground that it will lead to filling in the lacunae. It is duty of the court to allow the prosecution to correct an error in the interest of justice. The Court is vested with a broad and wholesome power to summon and examine or recall and re-examine any material witness at any stage. Closing of prosecution evidence is not an absolute bar. Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The relevant paragraphs read as:

28. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine Section 311 of CrPC. Section 311 provides that the Court “may”:

(i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and

(ii) Recall and re-examine any person who has already been examined.

This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court “shall” summon and examine or recall and re-examine any such person “if his evidence appears to the Court to be essential to the just decision of the case”. Section 311 contains a power upon the Court in broad terms.

The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

29. The first part of the statutory provision which uses the expression “may” postulates that the power can be exercised at any stage of an inquiry, trial or other proceeding. The latter part of the provision mandates the recall of a witness by the Court as it uses the expression “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”. Essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case constitute the touchstone which must guide the decision of the Court. The first part of the statutory provision is discretionary while the latter part is obligatory.

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32. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

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38. Having dealt with the satisfaction of the requirements of Section 311, we deal with the objection of the respondents that the application should not be allowed as it will lead to filling in the

lacunae of the prosecution's case. However, even the said reason cannot be an absolute bar to allowing an application under Section 311.

*39. In the decision in **Zahira Habibullah Sheikh (5) v. State of Gujarat**, which was more recently reiterated in **Godrej Pacific Tech. Ltd. v. Computer Joint India Ltd.**, the Court specifically dealt with this objection and observed that the resultant filling of loopholes on account of allowing an application under Section 311 is merely a subsidiary factor and the Court's determination of the application should only be based on the test of the essentiality of the evidence. It noted that:*

"28. The court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the court can take note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the court has to act under the second part of the section. Sometimes the examination of witnesses as directed by the court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

(emphasis supplied)

40. The right of the accused to a fair trial is constitutionally protected under Article 21. However, in

Mina Lalita Baruwa (supra), while reiterating Rajendra Prasad (supra), the Court observed that it is the duty of the criminal court to allow the prosecution to correct an error in interest of justice.

42. *The Court is vested with a broad and wholesome power, in terms of Section 311 of the CrPC, to summon and examine or recall and re-examine any material witness at any stage and the closing of prosecution evidence is not an absolute bar. This Court in **Zahira Habibulla H. Sheikh (supra)** while dealing with the prayers for adducing additional evidence under Section 391 CrPC at the appellate stage, along with a prayer for examination of witnesses under Section 311 CrPC explained the role of the court, in the following terms:*

“43. The courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on presiding officers of court to elicit all necessary materials by playing an active role in the evidencecollecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. This becomes more necessary where the court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and

acts more like a counsel for the defence is a liability to the fair judicial system, and courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.”

(emphasis supplied)

*Further, in **Zahira Habibullah Sheikh (5)** (supra), the Court reiterated the extent of powers under Section 311 and held that:*

“27. 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.”

10. From the perusal of above cited judgments, it is evident that

power under Section 311 of Cr.P.C. can be exercised at any stage of the trial. The prime object of the trial is to bring truth on record. Endeavour of the Court is to decipher the truth from the bundle of facts and lies. No innocent person should be punished and no guilty should be let free because of mistake or connivance of an Investigating Officer. Court cannot turn a blind eye or act as a hapless bystander.

11. In the case in hand, there is allegation of abetment to commit suicide against the petitioner. Wife of the petitioner has committed suicide. Investigating Officer during the course of investigation collected rent deed executed between the petitioner and Rupali Singh. The petitioner is not disputing existence of rent deed, however, he is pleading that owners of the accommodation should not be examined. The rent deed is part of judicial record. The investigating officer, despite having collected rent deed, did not cite owners of the house as witness. The trial Court has noticed that it has come before Investigating Officer that petitioner used to stay in aforesaid rented accommodation with a lady other than deceased. The prosecution evidence is still in progress. Case of prosecution is that petitioner has committed offence of abetment to commit suicide. Examination of owners of the premises is neither going to change nature of charge nor altogether strange evidence is going to come on record as pleaded and projected by the petitioner. It is only correction of mistake on the part of investigating agency. The petitioner is going to get an opportunity to cross the proposed witnesses, thus, no prejudice is going to cause the petitioner. The trial court has recorded categorical finding that examination of the proposed witnesses is necessary for the just decision of the case.

The findings recorded by trial court neither factually nor legally

seem to be incorrect, warranting interference of this court, thus, present petition being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

16.03.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>