

2023:PHHC:053769

114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16304-2023 (O&M)

Date of decision: 18.04.2023

HARDEV KAUR

...Petitioner

V/s

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Namit Khurana, Advocate
for the applicant/petitioner.

DEEPAK MANCHANDA J. (ORAL)

CRM-16394-2023

This is an application under Section 482 of Cr.P.C. seeking placing on record all the zimni orders (Annexure P-6) of the trial Court from 30.08.2016 to 31.03.2023.

For the reasons mentioned in the application, same is allowed.

Annexure P-6 is taken on record.

Application stands disposed of.

CRM-M-16304-2023

Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the order dated 30.01.2023 (Annexure P-2) passed during trial of FIR No. 133 dated 12.07.2016 registered under Sections 323, 452, 506 and 34 of the Indian Penal Code at Police Station Chhappar, District Yamuna Nagar passed by Judicial Magistrate Ist Class, Yamuna Nagar at Jagadhri, whereby evidence of the prosecution was closed by Court order as well as order dated 21.03.2023 passed by Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby criminal revision against the order dated 30.01.2023 was also

Learned counsel for the petitioner contends that after presenting the challan and framing of charges against the accused persons, statements of the witnesses were recorded. The examination-in-chief of the complainant/petitioner was also recorded and she was cross-examined at length, however, her further cross examination was deferred but the trial Court vide order dated 30.01.2023, when the case was fixed for further cross-examination of the complainant/petitioner, the evidence of the prosecution was closed by Court order. It was recorded in the order that the petitioner/complainant is observing the proceedings and does not want to adduce evidence despite availing various effective opportunities after framing of charges and wants to prolong the matter without any justifiable reason. It was also recorded in the order that she (complainant/petitioner) could not appear in the Court for adducing her evidence. Aggrieved thereof, petitioner preferred a criminal revision against the order dated 30.01.2023, but the said revision was also dismissed by Additional Sessions Judge, Yamuna Nagar at Jagadhri vide order dated 21.03.2023. Hence, the present petition.

Learned counsel for the petitioner contends that petitioner is an old aged sick and infirm lady, who is having 72 % disability and on 30.01.2023, she was suffering from acute fever, so, she could not appear before the Court. Further her counsel sought short adjournment of hearing, but the same was declined by the trial Court and evidence of the prosecution for further cross-examination of the complainant was ordered to be closed by Court order by the trial Court. After arguing for some time, learned counsel confines himself to the limited prayer for affording one more opportunity to complete the cross-examination of the complainant/petitioner.

I have heard learned counsel for the petitioner.

In the present case, after framing of charges against accused persons, during the course of trial, statements of witnesses were recorded and after examining the complainant/petitioner at length, her further cross-examination was deferred. However, vide the impugned order dated 30.01.2023, when the case was fixed for further examination of complainant and she could not appear in the court, evidence of the prosecution was closed by the order of the court, after observing that complainant/petitioner is watching the proceedings and does not want to adduce evidence despite availing various effective opportunities after framing of charge i.e. on 10.11.2016 and that she wants to prolong the matter without any justifiable reasons. The revision petition filed against the order dated 30.01.2023 has also been dismissed by the Addl. Sessions Judge vide order dated 21.03.2023.

The Karnataka High Court in case of **Sri. H. Suresh Vs. S.H.**

Prema, 2022(2) NIJ 525 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 of 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 re-examine (2021) 3 SCC 661 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."

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 Vs. 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 v. CBI [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 re- examination 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 Cr.P.C. 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 Ors.*** 2022(4) RCR (Criminal) 328 has observed that 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 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 judicially 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."

From the reading of the above-said provisions of law, it is clear that Court shall summon and examine or recall and re-examine any such person, if his evidence appears to be essential for the just decision of the case and that too at any stage. 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 the matter in dispute. The object of the provisions 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.

In view of the limited prayer made by the learned Counsel for the petitioner for affording one more opportunity to conclude the cross-examination of the complainant/petitioner, the present petition is allowed and the impugned orders dated 30.01.2023(Annexure P-2) and 21.03.2023 (Annexure P-4) passed

one more last/effective opportunity to the petitioner/complainant to conclude her cross- examination. However, it is made clear that no further opportunity shall be granted and the opportunity so granted shall be the last/final opportunity for concluding the evidence of the petitioner.

18.04.2023
Ajay Goswami

(DEEPAK MANCHANDA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes/No