

2023:PHHC:074981

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-1018-2023 (O&M)
Date of Decision:-24.5.2023

Darshan Singh @ Darshan Dass

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.D. Rattewal, Advocate for the petitioner.

Ms. Swati Batra, DAG, Punjab.

GURVINDER SINGH GILL, J. (Oral)

1. The petitioner assails order dated 20.1.2023 passed by learned Additional District and Sessions Judge, Jalandhar vide which the learned Trial Court while accepting an application under Section 311 Cr.P.C. filed by prosecution has ordered for summoning of PW – Inspector Bahadur Singh.
2. Notice of motion had already been issued.
3. A few facts necessary to notice are that the petitioner is facing trial in respect of FIR No.16 dated 4.11.2016 registered at Police Station Vigilance Bureau, Jalandhar, under Sections 7, 13(2) of Prevention of Corruption Act, 1988. One Jeet Kaur was cited as a witness being a shadow witness to the trap proceedings. However, it appears that said Jeet Kaur had gone abroad and accordingly vide order dated 16.12.2022 (Annexure P-3), the Trial Court had ordered for her examination through video conferencing.

4. Subsequently, when the matter was fixed before the Trial Court for recording of statement of aforesaid Jeet Kaur on 20.1.2023 through video conferencing and she had been identified by the Pairvi Officer of the Vigilance Bureau, the Trial Court observed that PW Jeet Kaur, who was appearing through video conferencing was in a room with an attendant and was lying on a bed in an unconscious state and was not responding to any call. Accordingly, the Trial Court, observed that Jeet Kaur was an old lady and was not in a fit state of mind and thus not fit to depose in the Court. On the same day, the prosecution moved an application under Section 311 Cr.P.C. to examine PW – Inspector Bahadur Singh, which was accepted by the trial Court while observing that the counsel for the accused had suffered a statement that he has no objection in case the said application under Section 311 Cr.P.C. to examine Inspector Bahadur Singh is allowed and accordingly summons were issued for recording the statement of aforesaid PW - Inspector Bahadur Singh.
5. Learned counsel for the petitioner has assailed the aforesaid order mainly on the ground that the accused/petitioner had never consented for acceptance of the application under Section 311 Cr.P.C. and that the Trial Court on its own had recorded such observations. It has been submitted that the petitioner as a matter of fact had been opposing the application as would also be evident from the reply (Annexure P-2) filed by the petitioner before the Trial Court.
6. Learned counsel for the petitioner has further submitted that PW - Inspector Bahadur Singh as a matter of fact had earlier been given up by the prosecution and, in these circumstances, the application under Section 311 Cr.P.C. was not maintainable and, in any case, could not have been allowed.

7. Opposing the petition, learned State counsel has informed that earlier PW – Inspector Bahadur Singh had been given up since the material witnesses were yet to be examined particularly the shadow witness i.e. PW - Jeet Kaur. However, it was on account of the fact that PW – Jeet Kaur was found to be unfit to get her statement recorded that a need arose for examining the aforesaid PW – Inspector Bahadur Singh, who had investigated the case partly. It has further been informed that pursuant to passing of order dated 20.1.2023 by the Trial Court, the said PW – Bahadur Singh already stands examined on 24.4.2023.
8. This Court has considered the aforesaid submissions.
9. Having regard to the aforesaid position, wherein this Court finds that the prosecution could not examine shadow witness, who was found to be unfit because of her advanced age, the necessity of the prosecution to examine PW – Inspector Bahadur Singh, who had earlier been given up, can well be appreciated. In any case as of now PW – Bahadur Singh, who had partly investigated the case has already been examined. This Court need not to make any observation as regards the factum of consent of accused regarding acceptance of the application under Section 311 Cr.P.C. since the application, in any case, deserved to be accepted on merits. PW – Bahadur Singh can not be said to have been introduced as an attempt on part to improve its case. He had partly investigated the case and is a cited witness.
10. In view of the aforesaid discussion, this Court does not find any infirmity in the impugned order dated 20.1.2023 passed by learned Additional District

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and Sessions Judge, Jalandhar and the same is hereby upheld. The instant petition is sans merit and is hereby dismissed.

24.5.2023 (Gurvinder Singh Gill)
Pankaj Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No