

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

2023:PHHC:079660
CRM-M-40077-2016 (O&M)
Judgement reserved on: 12.05.2023
Date of Decision: 30.05.2023

Ajay Kumar Sehgal

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Ajaivir Singh, Advocate for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. Ram Kumar Saini, Advocate for respondent no.2.

RAJESH BHARDWAJ.J (Oral)

1. The petitioner has approached this court by way of filing the present petition praying for quashing the order dated 27.7.2016 (Annexure P-5), passed by learned CJM (NRI Cases), Jalandhar in complaint case no.28002 of 2013 dated 4.10.13 titled as State Vs. Avtar Henry, whereby the application filed under Section 311 Cr.P.C to lead additional evidence filed by the petitioner/complainant has been dismissed.

2. As per the facts of the case, respondent no.2 had contested the Legislative Assembly Elections number of times and he remained Cabinet Minister in the Govt. of Punjab thrice. Kalandra under Section 125-A of the Representation of People Act, 1951 (hereinafter to be referred to as the Act) had been filed against respondent no.2 on the ground that though he is an NRI, however, he contested Assembly Elections by concealing the fact that he is a British Citizen. During the trial the petitioner filed an application under Section 311 Cr.P.C with a prayer to allow the prosecution to lead

additional evidence by examining the following witnesses:-

- (i) Sh. Navjot Singh Mahal, the then Addl. Deputy Commissioner of Police, Head Quarter & Security, Jalandhar in order to prove his report dated 14.2.2013 whereby he recommended prosecution of accused under section 125-A of Representation of People's Act.
- (ii) Sh. Gaurav Yadav, the then Commissioner of Police, Jalandhar to prove his office order dated 18.2.2013 and order dated 19.8.2013 whereby he issued necessary directions to file application in the court of Sh. Harpreet Singh, the then JMIC, Jalandhar to issue necessary order u/s 155(2) Cr.P.C.
- (iii) Sh. S.N. Garg, the then Under Secretary, Govt. of India, Ministry of Home Affairs (Foreigners Division) to prove his order dated 16.8.2012, whereby he ordered that accused Avtar Henry ceased to be citizen of India from the date he acquired British Citizenship in 1969.
- (iv) Sh. Pritam Singh, the then Deputy Director, Local Govt., Jalandhar-cum-Returning Officer to prove on record his order dated 30.11.2012 whereby he ordered removal of name of accused Avtar Henry from voter list of Jalandhar North Assembly constituency.

3. It was prayed that examination of these four witnesses is essential for the just decision of the case and thus they be allowed to be examined before the Trial Court. Learned Trial Court after hearing both the sides declined the same vide impugned order dated 27.7.2016. Aggrieved by the same petitioner has approached this court by way of filing the present petition. After issuance of notice of motion the separate replies have been filed by both the respondents.

4. Learned counsel for the petitioner has vehemently contended that the learned Trial Court has miserably failed to appreciate that respondent no.2 has concealed the fact that he is a British Citizen and thus he could not have contested the Assembly Elections. He submits that the petitioner has already deposed before the court as a witness and for the just decision of the case summoning of aforementioned four witnesses as sought by him in the application filed under Section 311 Cr.P.C was essential. It has been submitted by counsel that Sh. Navjot Singh Mahal was the Inquiry Officer in the matter during the course of investigation, whereas Sh. S.N. Garg was Under Secretary, Govt. of India, Ministry of Home Affairs and he ordered respondent no.2 to be ceased to be an Indian Citizen from the date he acquired the British Citizenship in 1969. He submits that to prove the same it was essential to summon the aforementioned four witnesses for the just decision of the case, however, learned Trial Court has wrongly declined the same vide impugned order. It is submitted that in the inquiry conducted it had been mentioned that information on some of the points was provided from the High Commission vide e-mail dated 14.5.2012 and as the information might have been received after submission of the report, the same would be part of the record. He submits that powers under Section 311 Cr.P.C are sacrosanct in nature and can be invoked at any time before the pronouncement of the order. Counsel submits that the examination of the witnesses sought by the petitioner was essential for the just decision of the case and the same is covered by the law settled by Hon'ble Supreme Court of India time and again but the same has been illegally declined by the Trial Court and hence the impugned order is unsustainable in the eyes of law.

5. Learned counsel for respondent no.2 has opposed the submissions made by counsel for petitioner. He submits that the application under Section 311 Cr.P.C has been filed clandestinely. It is submitted that the relevant record was already produced on the judicial file and it was already in the knowledge of the petitioner as is evident from the Kalandra filed. Counsel submits that the witnesses sought to be produced as additional evidence were never cited in the list of witnesses as they were considered as irrelevant in the facts and circumstances of the case. He submits that the petitioner has filed the application under Section 311 Cr.P.C only in order to prolong the trial and with a motive to restrain respondent no.2 from contesting the Assembly Election. He submits that the prosecution evidence has also been concluded and thus it is apparent that the said application has been filed totally in derogation of the statutory provisions of Section 311 Cr.P.C and the law settled. He submits that the present petition deserves to be dismissed with costs.

6. On the other hand, learned State counsel has also opposed the submissions made by counsel for petitioner. He submits that all the relevant witnesses have already been examined by the Trial Court and the witnesses sought to be examined are not necessary for the just decision of the case. He submits that the trial of the case is at final stage and the petitioner had intentionally filed the present petition clandestinely in order to prolong the trial. He submits that the petition filed is not even maintainable as the impugned order is revisable and the petitioner never approached the revisional court against the impugned order. He submits that the factum that respondent no.2 has lost his Indian Citizenship is a matter of trial to be decided by the court and thus petitioner has failed to make out any case for

invoking the power under Section 311 Cr.P.C. He has drawn attention of this court to the status report filed by way of affidavit of Sh. Nirmal Singh, ACP, Central, Jalandhar, wherein it is mentioned that respondent no.2 had returned to India on 6.9.1969 and contested election in the years 1986, 1992, 1997, 2002, 2007 and 2012, which is a matter of record. He submits that after conclusion of investigation, report under Section 173 Cr.P.C had already been presented. It is submitted that during the inquiry of the complaint filed before registration of the Kalandra under the Act, Inquiry Officer had sent intimation to the United Kingdom Border Agency about verifying the details of British Passport got prepared by respondent no.2, however, no intimation had been received about the details of the Passport. It is further submitted that the present petition is totally false and frivolous and the same is beyond the scope of invoking power under Section 311 Cr.P.C and thus deserves to be dismissed.

7. I have heard learned counsel for the parties at length and have gone through the record carefully.

8. The precise submission raised by learned counsel for the petitioner is that respondent no.2 had contested the Assembly Election by concealing his British Citizenship. The Kalandra under the Act had been filed. During the trial application under Section 311 Cr.P.C was filed. It is apparent from the record that majority of the witnesses has already been examined and thus the trial is virtually at the fag end. So far the summoning of the witnesses sought to be examined, they acted only in their official capacity and the prosecution has already led the evidence to prove the report prepared by the officials. There is no dispute regarding the

provisions of section 311 Cr.P.C to be used liberally, however, the court has to be cautious in invoking its power under Section 311 Cr.P.C and examine if the application under Section 311 Cr.P.C has been filed to delay the trial. Besides this, Section 311 Cr.P.C can be invoked if it appears to be essential to the just decision of the case and not for plugging the loopholes in the case. There is no gainsaying that the court has been granted ample power under Section 311 Cr.P.C to prevent the injustice. However, in view of the law settled, it is apparent that the Hon'ble Supreme Court has laid down that the power under Section 311 Cr.P.C should be invoked only to meet the ends of justice. The power should be exercised for strong and valid reasons and it should be exercised with great caution and circumspection. Section 311 Cr.P.C 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 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.”

9. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential for the just decision of the case. Reliance in this regard can be placed in case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation 2019(14) SCC 328**, wherein it has been held as under:-

“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.”

10. Hon’ble Supreme Court in ***Varsha Garg vs. The State of Madhya Pradesh and others, 2022 LiveLaw (SC) 662*** while examining the scope of Section 311 Cr.P.C. has held as under:-

32. 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 vital role to discharge in ensuring that the causes of discovering truth as an aid in the realization of justice is manifest.”

11. Taking into consideration the arguments raised by counsel for the petitioner on the anvil of the law settled, this Court is of the opinion that the impugned order dated 27.7.2016 (Annexure P-5), passed by learned

CJM (NRI Cases), Jalandhar suffers from no illegality and resultantly the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

30.05.2023

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