

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

CRM-M-43667-2017

Date of decision : 24.02.2023

Kuldeep Singh

.....Petitioner(s)

Versus

Fatta Singh and others

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.AS Sidhu, Advocate for the petitioner(s)

Mr.Arun Sheemar, Advocate for

Mr.GS Sullar, Advocate for respondent Nos. 1 to 9

Mr.Manipal Singh Atwal, DAG, Punjab

AMAN CHAUDHARY, J.

The present petition under Section 482 Cr.PC has been filed for quashing of the order dated 20.09.2017 passed by learned Additional Sessions Judge, Patiala affirming the order dated 24.05.2017 passed by learned JMIC, Rajpura, dismissing the application of the petitioner for recalling the Investigating Officer, namely SI Sukhpal Singh and also exhibiting the site plan (Nakhsa Mouka Nazri).

Learned counsel for the petitioner contends that during investigation conducted by SI Sukhpal Singh, he prepared various types of memos, site plant (Naksha Mouka Nazri) etc. The site plan of the alleged occurrence could not be exhibited in the statement of said SI, which is a material piece of evidence for just and proper adjudication of the matter.

However, the learned Courts below have without considering the same,

dismissed the application of the petitioner on the ground that the prosecution evidence had been closed by order on 16.12.2016, after having already availed of more than numerous opportunities and that the application has been made even after the statement of accused under Section 313 CrPC had been recorded and to fill up lacuna. Thus, he prays for grant of one opportunity to produce the site plan and to re-examine the said witness to prove it.

Learned counsel for the private respondents submits that the case is at the fag end as defence evidence has been closed and only to fill up the lacuna and to delay the trial, the present application was filed. Thus, he prays for the dismissal of the same.

Heard.

At the outset, it would be pertinent to make a reference to the operative part of the order passed by the revisional Court, while affirming the order of the trial Court, which reads thus:-

“The revisionist-complainant Kuldeep Singh has filed the present revision petition for challenging the impugned order dated 24.05.2017 passed by the Ld. Trial Court, whereby, the application under Section 311 of the Cr.P.C. filed by the prosecution for summoning of SI Sukhpal Singh, Investigating Officer of the case and to exhibit the site plan has been ordered to be dismissed. From the perusal of the trial court file, it is revealed that the present case FIR pertains to the year 2010. The charge against the accused persons was initially framed vide order dated 25.11.2011 and re-framed on 21.05.2014. Thereafter, the prosecution has availed of numerous opportunities to conclude its evidence, but, it failed to conclude its entire evidence and the remaining evidence of the prosecution was closed by order dated 06.12.2016 after examination of PW10 SI Sukhpal Singh whose re-examination is now sought. Statement of accused has been recorded under Section 313 of the Cr.P.C. on 03.01.2017. Thereafter, the accused availed Eight opportunities for leading defence evidence, when

application under Section 311 of the Cr.P.C. has been filed. It is note-worthy that the site plan now sought to be exhibited in the statement of PW10 SI Sukhpal Singh was in the knowledge of the prosecution. It is a settled proposition of law that a party cannot be allowed opportunity to fill up the lacunae.”

For the purpose of adjudication of the matter, it is apposite to make a reference to Section 311 Cr.PC., which reads thus:

“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.”

The second part of the aforesaid provision though is mandatory and compels the Court to take any of the steps, provided discovering relevant facts or obtaining proper proof thereof is essential to the just decision of the case.

It is trite law that no party in a trial can be foreclosed from correcting errors and if proper evidence was not adduced or relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified, equally is it settled that an application under Section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. At the same time the discretion vested under Section 311 CrPC has to be exercised judicially for valid reasons to prevent miscarriage of justice as

held by Hon'ble The Supreme Court of India in **V. N. Patil Vs K Niranjan Kumar** (2021) 3 SCC 661.

Indubitably, the power of the Court under Section 311 Cr.PC is wide enough to recall a witness at any stage. The aim of every Court is to discover the truth and the object of provision is to do complete justice and to convict the guilty and protect the innocent. It is to be borne in mind that the discretionary power conferred under Section 311 Cr.PC has to be exercised judiciously and not capriciously or arbitrarily, as it is always said 'wider the power, greater is the necessity of caution and circumspection.' It should be exercised only on sound legal principles, in cases where party concerned establishes valid reasons for bringing on record such evidence as may be essential for just decision of the case. It being one amongst many provisions which strengthen the arms of the Court in its effort to unearth the truth by following due procedures sanctioned by law but not to be exercised on the mere bidding of a party.

The power conferred under Section 311 CrPC should be invoked by the court only to meet the ends of justice and in a case where the prosecution evidence has been closed long back and the reasons for re-examination of the witness are not satisfactory, the summoning of the witness at such a belated stage would cause great prejudice to the accused and should not be allowed, was observed by Hon'ble The Supreme Court in the case of **Swapan Kumar Chatterjee Vs. Central Bureau of Investigation**, (2019) 14 SCC 328.

Learned counsel for the petitioner has not been able to demonstrate before this Court any valid circumstances and justification for

not producing the site plan at the stage appropriate, if it was considered to be so material, despite innumerable opportunities having been granted and/or the reason of filing of the application only when even the defence evidence had come to a close. 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. The prosecution had in fact rightly accepted the order passed by the trial Court, which is apparent from the fact that it did not choose to prefer filing of revision petition against the same, which was filed at the hands of the complainant.

In view of the above discussion, this Court finds no illegality or perversity in the impugned orders passed by the Courts below which do not call for any interference by invoking the jurisdiction under Section 482 Cr.P.C. Accordingly, the present petition is *sans* merit and is hereby dismissed.

24.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No