

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

CRM-M-45238-2016

Date of Decision: 14.03.2023

Prabhjit Singh @ Prabhjot Singh

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Harsh Chopra, Advocate, for the petitioner.
Mr. Sandeep Kumar, Deputy Advocate General, Punjab.
Ms. Lovepreet Kaur, Advocate, for respondent No.2.

Rajesh Bhardwaj, J.

The petitioner has approached this Court by way of filing the present petition under Section 482 Cr.P.C. for quashing of order dated 25.07.2016 passed by the learned Additional Chief Judicial Magistrate, Mogai in FIR No.15, dated 09.02.2012 registered under Section 406 IPC, at Police Station Moga Sadar, whereby, the application under Section 311 Cr.P.C. filed by the petitioner, was dismissed.

As per facts of the case, the petitioner-complainant lodged the FIR alleging therein that he purchased a Car Accent Hyundai bearing No.PB29F0075 in the year 2005, which was financed by ICICI Branch, Moga. In the year 2005/06 Harjinderpal Singh husband of Inderjit Kaur-respondent No.2 was serving in Civil Courts Moga as Additional District & Sessions Judge. The complainant had friendly relations with him and he used to borrow his car on number of occasions. The car used to be taken by his gunman Jagmohan Singh-respondent No.3. In September 2010, son of Inderjit Kaur, namely, Harry came to Moga and borrowed the car of the petitioner and but thereafter it was not returned. Despite best efforts, the car

was not returned and hence, a complaint was lodged against Inderjit Kaur and Jagmohan Singh for taking legal action for misappropriating and destroying his car. After registration of the FIR, the investigation commenced and challan was presented and charges were framed and the trial Court proceeded with the examination of the prosecution witnesses. When the trial Court had examined four prosecution witnesses, the complainant-petitioner filed the present application under Section 311 Cr.P.C. for granting permission to place on record the photocopies of the affidavits and directing ASI Sat Pal Singh, CIA Staff, Moga to produce the original of those documents. However, learned trial Court declined the same vide impugned order dated 25.07.2016. Aggrieved by the same, the petitioner has approached this Court by way of filing the present petition.

It has been contended by learned counsel for the petitioner that the learned trial Court had fallen in error in declining the application filed by the petitioner under Section 311 Cr.P.C. He submits that Inderjit Kaur-respondent No.2 in connivance with HC Jagmohan Singh-respondent No.3 had misappropriated the car of the petitioner. He submits that during the investigation, ASI Sat Pal Singh enquired about the misappropriation of the car and it was found that HC Jagmohan Singh had sold the Accent Car to one Gurpreet Singh and for selling the car, HC Jagmohan Singh purchased the stamp paper in the name of the petitioner and forged the signatures of the petitioner on the stamp paper and sold the car through forged and fabricated affidavit to Gurpreet Singh. He submits that for summoning of the record of the enquiry pertaining to the affidavit, the petitioner filed an application under Section 311 Cr.P.C., which has been illegally declined. He submits that power under Section 311 Cr.P.C. is sacrosanct in nature and

this Court has ample power to allow the same, if the record sought to be summoned is essential for just decision of the case. He has relied upon the judgments of the Hon'ble Supreme Court in Manju Devi vs. State of Rajasthan and another, 2019(5) RCR (Criminal) 750 and Varsha Garg vs. The State of Madhya Pradesh and others, 2022 LiveLaw (SC) 662 and the judgments of this Court in Brig. (Retd.) Arun Kaistha vs. State of Punjab, 2019(4) RCR (Criminal) 954 and Balwinder Singh vs. State of Punjab and others, 2010(1) RCR (Criminal) 909 and has submitted that the view taken by the learned trial Court is against the law settled, as the power under Section 311 Cr.P.C. can be invoked at any stage before the pronouncement of the judgment. He has submitted that the petitioner has not caused any delay in the on going trial, thus, dismissal of the application filed under Section 311 Cr.P.C. is totally unsustainable in the eyes of law.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has submitted that the FIR in question was registered on the statement of the complainant-petitioner in the year 2012 and thereafter, the same was thoroughly investigated and challan was presented. He submits that after the presentation of the challan, charges were framed and the prosecution duly cited the prosecution witnesses including the officials pertaining to the enquiry conducted. He has submitted that as evident from the order passed on the earlier occasions the complainant himself did not appear before the trial Court and then filed the present application under Section 311 Cr.P.C. only in order to delay the trial. He submits that when the enquiry was already conducted and the challan was also presented, the complainant has failed to make out a case for invoking its power under Section 311 Cr.P.C.

He submits that though the interim stay was granted by this Court on 20.04.2017, however, the same was modified by this Court on 25.07.2022 to the extent that the trial Court may proceed with the trial but shall not pass the final judgment. He submits that thereafter the trial proceeded and the prosecution witnesses stood examined and the case is fixed for recording of statement of the accused under Section 313 Cr.P.C. He submits that as a result the application filed being vacuous deserves to be declined.

Heard.

For the appreciation of the arguments raised by learned counsel for the parties, appreciation of the provisions of Section 311 Cr.P.C. is relevant, which reads as under:-

“311. Power to summon material witnesses, 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.”

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. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation**, (2019) 14 SCC 328 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.”

The precise submission made by learned counsel for the petitioner that after registration of the FIR, enquiry was conducted by the Investigating Agency and it was found during the enquiry that HC Jagmohan Singh has sold the car of the petitioner on the basis of the forged documents. However, the Investigating Agency after conducting the investigation filed the challan alongwith the list of the witnesses. In the list of witnesses, official witnesses of enquiry were also cited, namely, ASI Gurmail Singh, Reader to Sat Pal Singh Bhangu, DSP, City Moga and Gurbinder Singh Sangha, DSP City, Moga. These witnesses cited are in relation to the enquiry conducted and thus, the documents sought to be summoned by the petitioner cannot be said to be germane to the controversy in dispute as the relevant witnesses had already been cited by the prosecution.

The law settled in judgments relied upon by learned counsel for the petitioner is not disputed, however, the facts and circumstances of the present case are distinguishable. No doubt, the provisions of Section 311 Cr.P.C. can be invoked when it is necessary for the just decision of the case, however, the same cannot be invoked for filling up the loopholes in the case and to delay the trial. The Court is to invoke the power under Section 311 Cr.P.C. with circumspect. Though the provisions of Section 311 Cr.P.C. can

be invoked at any time before the pronouncement of final judgment but the Court is to be conscious enough to see whether the application has been filed as a deliberate attempt to delay the trial. The provisions of Section 311 Cr.P.C. are sacrosanct and liberal in nature, however, the Hon'ble Supreme Court has time and again laid down that the provisions of Section 311 Cr.P.C. are discretionary in nature.

Thus, weighing the facts and circumstances of the case on the anvil of the law settled, this Court finds no infirmity in the view taken by the learned trial Court. Resultantly, the petition being devoid of any merit is hereby dismissed.

14.03.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No