

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

204

CRM-M-22425-2019
Date of decision: 13.02.2023

GURMINDER SINGH KAHLLOON

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. G. S. Sirphikhi, Advocate
for the petitioner.

Mr. Manipal Singh Atwal, DAG, Punjab.

Mr. Harminder Singh, Advocate
for respondents No. 3 to 5.

AMAN CHAUDHARY. J.

The present petition has been filed under Section 482 Cr.P.C. for quashing the order dated 18.04.2019 (Annexure P-7) passed by the JMIC, Batala whereby the application under Section 311 Cr.P.C. has been dismissed.

Learned counsel for the petitioner submits that in the application filed under Section 311 Cr.P.C. prayer was made seeking to summon the witness namely Dr. Seema Sharda, Assistant Director, Forensic Science Laboratory, SAS Nagar, Punjab for the purpose of tendering the FSL report dated 13.06.2011, which was material piece of evidence that would be necessary for the just decision of the case. He submits that the report is not admissible till such time that it is tendered in evidence and exhibited. He relies on the judgment in the case of **Abid Beig Vs State of Rajasthan, 2013(7) RCR (Cr.) 1211.**

Learned counsel for the private respondents, submits that the application has been belatedly filed and has been filed only with a view to delay the trial. The learned trial Court has rightly declined the application on valid grounds. Dismissal of the present petition has been prayed for.

Heard.

It would be apposite to refer to the provision of Section 311 CrPC, before delving into the issue involved in the present case:

“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 above provision is only circumscribed by the principle that the evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means.

The prosecution by way of the application was seeking to summon Dr Seema Sharda, Assistant Director Forensic Science Laboratory to prove that the agreement dated 29.03.2003 and the receipt dated 31.03.2003 were forged and fabricated, issue involved in the FIR, which the learned Court disallowed on the ground that the prosecution was in the knowledge of the fact, but there was no plausible explanation of not seeking permission to examine the expert witness, when the previous two applications were filed, which were allowed.

It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. It is the duty of a

Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case as held in **Mohanlal Shamji Soni v. Union of India & Anr.** AIR 1991 SC 1346, by Hon'ble The Supreme Court of India.

In the case at hand, the expert evidence that was sought to be examined was thus that would go to the root of the issue and the power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. The view of the learned trial Court to disallow the vital evidence on the sole ground that in previous two applications this prayer had not been made, is contrary to the aforesaid, as was held by Hon'ble the Supreme Court of India in the case of **U.T. of Dadra & Nagar Haveli vs. Fatehsinh Mohansinh Chauhan** [(2006) 7 SCC 529].

The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth. It is not only the prerogative but also the plain duty cast upon the Court to examine such of those witnesses for doing justice between the State and the subject.

It is imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted above. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as

a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined, held by Hon'ble The Apex Court in **Rajaram Prasad Yadav v. State of Bihar & Anr., (2013) 14 SCC 461**, as is the position in the case at hand, the prosecution having not cited Dr. Seema Sharda, Assistant Director, Forensic Science Laboratory, SAS Nagar, Punjab, in the list of witnesses.

Having considered the facts and circumstances of case in light of the provision of law and the afore-referred judgments, this Court finds merit in the present petition, the same thus, deserves to be allowed. Accordingly, the order dated 18.04.2019 (Annexure P-7) passed by the learned JMIC, Batala is hereby set aside, subject to the petitioner depositing Rs.15,000/- with the Poor Patients Welfare Fund, PGI, Chandigarh. One effective opportunity is ordered to be granted to examine the expert witness for tendering the report.

The present petition stands allowed.

(AMAN CHAUDHARY)
JUDGE

February 13, 2023

Mehak

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