

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

CRM-M-24580-2023
Date of decision:15.05.2023

VIRENDER SINGH

....Petitioner

Versus

STATE OF HARYANA

....Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sandeep Lather, Advocate
for the petitioner.

HARSH BUNGER, J. (ORAL)

Petitioner (Virender Singh) has filed this petition under Section 482 of the Code of Criminal Procedure, 1972 (for short 'the Cr.P.C.) seeking quashing of order dated 15.12.2022 (Annexure P-8) passed by the learned Judicial Magistrate Ist Class, Guhla, whereby an application under Section 311 of the Cr.P.C. filed by the respondent-State during course of trial in case FIR No.203 dated 21.12.2019 (Annexure P-1) under Sections 409, 420, 467, 468 and 471 of the Indian Penal Code, 1860, registered at Police Station Guhla, District Kaithal, was allowed.

The petitioner has also challenged order dated 10.04.2023 (Annexure P-10) passed by learned Additional Sessions Judge, Kaithal; whereby, the Criminal Revision filed by petitioner against order dated 15.12.2022 (Annexure P-8) passed by learned Judicial Magistrate Ist Class, Guhla, was dismissed.

2. Briefly, the petitioner herein is an accused in the aforesaid case FIR; wherein, he is stated to have embezzled an amount of Rs.56,76,823/- while working as a Clerk in the Co-operative Bank, Guhla Branch. During the course of the trial, the respondent-State filed an application dated 05.12.2022 under Section 311 of the Cr.P.C. for re-examination of PW4-Raghav and PW13-Ravinder. A further prayer was made to examine Jaimal Singh (Peon) son of Kapoor Singh resident of Azamgarh, District Kaithal and one Computer Operator, who were not arrayed as witnesses.

3. The afore-said application under Section 311 of the Cr.P.C. filed by the respondent-State was contested by the petitioner herein by filing his reply.

4. Learned trial Court, vide order dated 15.12.2022 allowed the application under Section 311 of the Cr.P.C filed by the respondent-State, thereby permitting examination of the witnesses mentioned in the application under Section 311 of the Cr.P.C.

5. Being aggrieved against the aforesaid order dated 15.12.2022 passed by learned Judicial Magistrate Ist Class, Guhla, the petitioner filed a Criminal Revision before the Court of learned Additional Sessions Judge, Kaithal; however, the same was also dismissed vide order dated 10.04.2023 (Annexure P-10).

6. In the afore-mentioned circumstances, the petitioner has filed the instant petition under Section 482 of the Cr.P.C., seeking quashing of the above-said orders dated 15.12.2022 (Annexure P-8) and 10.04.2023 (Annexure P-10), passed by the Courts below.

7. Learned counsel for the petitioner submits that the learned Courts below have erred in law and facts in allowing the application under Section 311 of the Cr.P.C filed by the respondent-State as the witnesses PW-4 and PW-13 who were sought to be re-examined; had already been examined by the prosecution and they could not be allowed to be re-examined at the far end of the trial. It is submitted that the new witnesses namely, Jaimal (Peon) and Computer Operator, could also not have been permitted to be examined as they were not mentioned in the list of witnesses. It is further submitted that permitting examination of the said witnesses at the belated stage shall amount to filling up the *lacuna* in the prosecution case. Accordingly, it is submitted that the present petition may be allowed by setting aside the impugned order(s).

8. I have heard learned counsel for the petitioner and perused the paper-book as well as the impugned order(s).

9. Here it would be apposite to extract Section 311 Cr.P.C., which is reproduced as below:-

“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.”

A perusal of the above quoted provision would manifest that the Court is vested with a broad and wholesome power to summon and

examine or recall and re-examine any material witness at any stage, if his/her evidence appears to be essential to the Court for the just decision of the case.

10. The petitioner is an accused in the afore-said case FIR and is facing the charges of embezzlement allegedly committed by him while working as a Clerk in the Co-operative Bank, Guhla Branch. The learned Revisional Court below while considering the submissions as raised by learned counsel for the petitioner before this Court regarding re-examination of PW4-Raghav and PW13-Ravinder and also the examination of Jaimal (Peon) and Computer Operator with the Kaithal Central Co-operative Bank, Kaithal, as witness along with relevant record, has held as under :-

“10. As appeared, learned Trial Court has observed that while allowing to further examine PW4 Raghav and PW13 Ravinder, that some of the documents could not be produced by the witnesses, when examined despite due diligence and the relevant record is necessary for just decision of case and further had observed that one Jaimal, who is although not cited as a witness in the list of witnesses, is the most relevant since in his account the amount was first transferred and thereafter to the account of accused and further observed that computer operator with the Kaithal Central Co-Operative Bank, Kaithal is required to be summoned in order to understand and verify how the accused had got access to pass codes/pass words of the computer system of the bank.

11. This court observes that above evidence which is allowed vide section 311 Cr.P.C. seems to be essential for the just and proper decision of the case and

this court do not find any illegality or infirmity in the observations of learned Trial Court while passing the impugned order.”

11. I have considered the afore-said reasoning rendered by the Revisional Court. Examination of PW4-Raghav and PW13-Ravinder was considered necessary as some documents could not be produced by witnesses earlier despite due diligence and relevant record was necessary for just decision of case. Examination of Jaimal has been considered relevant as the money had come to his account and then transferred to the account of accused. Computer Operator has been permitted so as to understand and verify as to how accused got access to pass codes/passwords of the computer system of bank. The object of the Court is to discover truth and Section 311 of the Cr.P.C is one of such provisions of the Code which empowers the Court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or to examine any person in attendance, though not summoned as a witness or recall and re-examine already examined witness. The Court also has the power to summon and examine or re-call and re-examine any such person if his evidence appears to it to be essential for the just decision of the case.

12. As regards the submission of learned counsel for the petitioner that the application under Section 311 of the Cr.P.C filed by the respondent-State has been allowed at a belated stage; suffice it to say that the power under Section 311 of the Cr.P.C. can be exercised at any stage of an inquiry, trial or other proceedings and is not constrained by the closure of evidence. In this regard, reference can be made to judgment

rendered by the Hon'ble Supreme Court in *Varsha Garg v. State of Madhya Pradesh, 2022(4) RCR (Criminal) 328*.

13. In view of the above, I do not find any illegality or perversity in the impugned orders. There is no merit in the present petition and the same is accordingly dismissed.

14. All pending application/s, if any, shall also stand closed.

May 15th, 2023
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No