

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

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CRM-M-25848-2023 (O&M)

Date of decision : 28.07.2023

Amrit Lal Garg

.....Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Ashish Soi, Advocate for the petitioner

Ms.Himani Arora, AAG, Punjab

Mr.Rajdeep Singh Chugh, Advocate for respondent No.2

AMAN CHAUDHARY, J.

1. The present petition under Section 482 of the Code of Criminal Procedure has been filed for setting aside order dated 05.05.2023, Annexure P19, passed by learned trial Court vide which application filed by the petitioner under Section 311 CrPC was dismissed.

2. Learned counsel for the petitioner would submit that an application filed under Section 311 CrPC for summoning and examining the witness as mentioned in application, has been wrongly dismissed by learned trial Court vide order dated 05.05.2023, Annexure P-19. He further submits that non-examination of the said witness will cause an irreparable loss of the petitioner, he therefore prays for grant of one opportunity.

3. On the other hand, learned counsel for respondent No.2 resisted the petition on the ground that the complainant is delaying the matter, on account of which the respondent No.2 is suffering. The trial Court has rightly dismissed the application of the petitioner as a number of opportunities have been availed of and

he cannot be allowed to fill up lacunaes.

4. Heard the learned counsel for the parties.

5. Contextually, it is expedient to refer Section 311 CrPC, that 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.”

6. Evidently, there are two aspects in the afore referred provision namely; that the power can be exercised by any Court at any stage of the proceedings and equally if not more important is the usage of word ‘shall’ in the second part, that makes it incumbent upon the Court to summon and examine all persons whose evidence appears to be essential to the just decision of the case. The purpose behind exercise of powers under Section 311 of the Code of Criminal Procedure by the Court is not to fill in lacunae in the evidence led by the prosecution or support the defence but to discover the relevant facts or obtain proper proof of such facts for arriving at a just decision of the case. It is ultimately with the Court of facts to place reliance on the testimony of witnesses which would be based on the quality of their evidence, the truthfulness in it and confidence which it inspires. The only consideration which should weigh with the Court is to see that justice is done.

7. As is discernible from the record, though the challan in the case was presented in the year 2015, whereafter charges were framed in 2016 and the complainant was examined in part on 06.08.2016, as PW-1, when sufficient evidence having come on record against one Labh Singh, who was not challaned,

an application under Section 319 CrPC was filed and allowed on 11.04.2017. The same came to be challenged before the Revisional Court and vide order dated 03.04.2019, the matter was remanded to the trial Court for deciding the said application afresh. The proceedings from March 2020 till 2022 were hampered by the onslaught of Covid-19 pandemic. Order dated 09.09.2022, Annexure P-11 reveals that reply to application under Section 319 CrPC was not filed and it was only on 22.09.2022, that the said application and the other filed under Section 205 CrPC by accused-respondent No.2 seeking exemption from appearing in the Court, were decided. After that, three prosecution witnesses, namely, Shivam, Joga and ASI Ravinder Singh were examined and vide Court order dated 21.04.2023, the evidence of the prosecution was closed without completing the examination of the complainant, that had been previously recorded in part.

8. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. Non examination of the material witnesses and further dismissal of the application under Section 311 CrPC on the ground that the same has been filed to delay the proceedings and at a stage when the prosecution evidence was closed by order, amounts to penalising the complainant for no fault on his part, as in the present case, wherein the applications under Sections 319 and 205 CrPC were pending till 20.09.2022, whereafter, the prosecution evidence recommenced and the three witnesses were examined, but still the examination of the complainant had yet to be completed, which was imperative. Hon'ble The Supreme Court in the case of **Iddar vs. Aabida**, (2007) 11 SCC 211, in context of Section 311 CrPC, observed that, "It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not

only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means...”

9. In the case of **Hanuman Ram vs. State of Rajasthan**, (2008) 15 SCC 652, Hon'ble The Supreme Court observed that, the Courts below were also required to keep in mind that the object underlying Section 311 CrPC was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses.

10. Hon'ble The Supreme Court in **Mohanlal Shamji Soni vs. Union of India**, 1991 Supp (1) SCC 271 laid down the ratio that, “The principle of law that emerges from the views expressed by this Court in the above decisions is that the Criminal Court has ample power to summon any person as a witness or recall and reexamine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only requirements of justice command this examination of any person which would depend on the facts and circumstances of each case.”

11. The law as enunciated being that the power under Section 311 CrPC can be exercised at any stage of the proceedings in order to determine the truth and render just decision as also to meet the ends of justice, such discretion of the Court is not limited. The determining factor should therefore be whether summoning/recalling of the witnesses is in fact essential to the just decision of the case.

12. Fairness of trial being a virtue that is sacrosanct in the judicial system, the dismissal of the application of the petitioner amounts to denial of a fair opportunity to the complainant to project his case.

13. Hon'ble The Supreme Court in the case of **Varsha Garg vs. State of M.P.**, 2022 SCC OnLine SC 986 had observed that “...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 a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.”

14. In view of the afore discussion, this Court is of the considered opinion that the impugned order is liable to be set aside. Accordingly, the present petition is allowed, subject to costs of Rs.10,000/- to be deposited with the trial Court, which will forthwith be disbursed to respondent No.2. The trial Court is directed to grant one effective opportunity to the petitioner to complete his examination.

15. Pending application(s), if any, shall also stand disposed of

28.07.2023
gsv

(**AMAN CHAUDHARY**)
JUDGE

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