

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

CRR-1391-2023

Date of decision : 05.07.2023

Hardev Singh

...Petitioner

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Vikram Preet Arora, Advocate for the petitioner.

MANOJ BAJAJ, J.

Hardev Singh has preferred this revision petition to challenge the order dated 23.03.2023 passed by Judicial Magistrate Ist Class, Khanna, whereby his application dated 24.11.2022 filed under Section 311 Cr.P.C for recalling prosecution witness PW-1, namely, Harinderpal Singh for further cross examination was dismissed.

The facts in brief leading to the petition are that on the basis of complaint given by Harinderpal Singh relating to death of Amandeep Singh, a case FIR No.46 dated 27.02.2019 under Sections 283, 304-A and 427 Indian Penal Code, 1860 was registered at Police Station Salem City-2, District Khanna. The FIR is Annexure P-1 and allegations contained in the same read as under:-

“Statement of Harinderpal Singh S/o Late Nirmal Singh caste Jatt, resident of Bahomajra, P.S Sadar Khanna, aged about 62 years mobile no. 6284295164 stated that I am a resident of above-said address and working as agriculturist. Yesterday 26.02.2019, I alongwith my son Amandeep Singh went to Khanna for some personal work and when we were going back to Khanna on our respective motorcycles, then at about 9.00 pm, a tanker bearing no. PB-11BK- 7341 was going in front of us, who stopped without any signal and there were no back lights on the said tanker. Due to which motorcycle of my son

Amandeep Singh bearing no. Pb-26E-2543 hit the said tanker from back side, resulting in head injury to my son, who fell down on the road. I stopped my motorcycle and rushed to save my son. In the meantime, driver of the tanker came down. On asking he disclosed his name as Hardev Singh S/o Harchand Singh, resident of Maksoodra, P.S. Payal, Distt. Ludhiana. Number of people gathered there and I took my son to Khanna Nursing Home, where doctors referred him to Ludhiana. But my son got expired on the way.”

Upon registration of case, the investigation was conducted and after it's completion the accused was sent to face trial through final report under Section 173 Cr. P.C. After framing of charges by the trial Court, the prosecution examined its witnesses including complainant, namely, Harinderpal Singh as PW-1. The deposition of the complainant is appended with the petition as Annexure P-4 and the same concluded on 28.02.2020.

During the trial proceedings, the accused/petitioner filed his application dated 24.11.2022 (Annexure P-2) with a prayer for recalling the complainant (PW-1) for the purpose of cross examination on certain issues, but the said prayer was opposed on behalf of the prosecution by filing a reply (Annexure P-4). The trial Court after considering the grounds raised in the application as well as the arguments on behalf of the learned counsel for the parties proceeded to dismiss the application through impugned order dated 23.03.2023. Hence, this petition.

Learned counsel for the petitioner has argued that the deposition of complainant is formally complete, but the counsel representing the accused-petitioner before the trial Court had not put the important relevant questions to the said witness, therefore, the necessity arose to move the application under Section 311 Cr.P.C for recalling the complainant for further cross examination. According to him the trial Court has failed to appreciate the facts and circumstances of the case carefully and erroneously dismissed the application.

He submits that in case the application is allowed and the complainant is recalled for further cross examination, no prejudice would be suffered by the prosecution. According to the learned counsel, the petitioner has now changed his defence counsel and the previous cross examination conducted by the then counsel was not proper, therefore, the petitioner is well within his rights to call for the said witness again for putting him more questions in cross examination to elicit truth.

After hearing learned counsel and considering his submission, this Court finds that the prosecution witness, namely, Harinderpal Singh (PW1) was recorded on 28.02.2020 and subsequently his cross examination was conducted on 09.03.2020. Further a perusal of the application moved by the petitioner under Section 311 Cr.P.C. would show that recalling of the witness PW1 is being prayed solely on the ground that the accused engaged the services of the new counsel, namely, Ram Singh Libra only on 30.11.2021 and he noticed that the material questions were not put to PW1-Harinderpal Singh. The trial Court after examining the material on record as well as the ground raised in the application has dismissed the application by giving valid reasons.

The same issue was raised before this Court in CRM-M-14140-2022 titled as '**Baljinder Singh @ Gogi vs. State of Punjab**' wherein, the ground relating to the change of defence counsel raised for recalling the prosecution witness for further cross examination was considered and while dismissing the said prayer the following observations were made:-

“At this juncture, it also needs to be noticed that the evidence of the prosecution stood closed long back, much before the filing of the application dated 30.11.2021 under Section 311 Cr.P.C., and even by that time, six defence witnesses also stood examined before the trial Court. The application is based on the solitary ground that earlier the cross-examination of PW-2,

Jaspal Singh was not conducted properly by the then defence counsel, therefore, recalling of this witness for further cross-examination is necessary.

The cross-examination of a witness of an adverse party or a hostile witness is an art and every lawyer as an individual, may have different ways of grilling the witness in order to test the truthfulness and credibility of such deposition recorded during examination-in-chief, so, there cannot be a stereo typed questionnaire to be used by lawyer during cross-examination, as much would also depend upon the answers of the witness. Of-course the cross examination may appear like a battle between un-equals, where a rustic witness is cross-examined by a lawyer, but the ground that the previous defence lawyer was not skillful or the new lawyer is more refined is not worth acceptance, particularly when there is no suggestion that the previous defence lawyer did not pursue the interest of accused honestly. If, such a ground is accepted for exercise of power under Section 311 Cr.P.C this would not only add delay in conclusion of trial proceedings, but would also put extra burden upon the trial Judge to evaluate the multiple depositions of a witness. Also, the trial Courts have to be very careful while dealing with such type of prayers, and must bear in mind that many a times it has been noticed that the recalled witness retracts from the testimony recorded earlier and it results in damage to the prosecution case.”

Besides, it is also a settled law that no party should be allowed to fill up a lacunae under the garb of adducing additional evidence by invoking Section 311 Cr.P.C and in this regard, reference can be made to the judgment of Hon'ble Supreme Court of India in “**Natasha Singh Vs. CBI, 2013 (3) R.C.R. (Criminal) 368**, wherein the following observations were made:-

“14. The scope and object of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 Criminal Procedure Code 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. Further, the additional evidence must not be received

as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection.”

Thus, in view of the above discussion, this Court finds that the trial Court has considered the merits of the application in accordance with law and has rightly refused to exercise the jurisdiction under Section 311 Cr.P.C. The impugned order does not suffer from any illegality or impropriety, therefore, no interference is called for.

Resultantly, petition fails and is dismissed *in limine*.

05.07.2023

neeraj

Whether speaking/reasoned :

Whether Reportable :

Yes

Yes

No

No

(MANOJ BAJAJ)
JUDGE