

CRM-M-26686-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 15.09.2023

Pushpinder Singh

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ajay Kumar Sharma, Advocate for the petitioner.

Mr. Mohit Thakur, AAG Punjab.

ARUN MONGA, J. (Oral)

Present petition is to set aside impugned order dated 27.08.2018 (Annexure P-1) passed by Judicial Magistrate 1st Class, Kharar and order dated 04.05.2019 passed by learned Additional Session Judge, Mohali, whereby application moved by petitioner under Section 311 Cr.P.C. to re-examine witness PW-2 Randhir Singh has been dismissed.

2. Succinctly facts first, as pleaded in the instant petition.

2.1 Initially, an FIR No.0007 dated 16.01.2016 under Sections 279, 304-A IPC was registered at Police Station Sadar, Kharar, District Mohali against the petitioner on account of death of one Virender Singh, who died in a road side accident on 15.01.2016. Thereafter, on 20.01.2016, petitioner was arrested on the complaint of Randhir Singh. After completion of investigation, report under Section 173 Cr.P.C. was presented before the competent court of jurisdiction. During trial, complainant Randhir Singh was examined by prosecution as PW-2 on 07.10.2016 and on the request of defence counsel, his cross examination was deferred. On 04.11.2016, PW-2 Randhir Singh was cross examined at length by defence counsel and cross examination was concluded. At this stage, an application under Section 311 Cr.P.C. was moved by accused-petitioner for re-

examination of PW-2 Randhir Singh on the ground that some queries and doubt had arisen while examining other witnesses.

2.2 Aggrieved, petitioner filed revision petition before the Additional Sessions Judge, SAS Nagar, Mohali challenging the impugned order but the same was declined by observing that revision against the order passed under Section 311 Cr.P.C. was not maintainable as it is interlocutory order and its validity can be challenged only under Section 482 Cr.P.C. and not by way of revision under Section 397(2) Cr.P.C.

3. Learned counsel for the petitioner contends that re-examination of PW-2 Randhir Singh was necessary for just proper and fair adjudication of the case. He submits that both the Courts below have dismissed the application only on the ground that there is no provision in the Indian Evidence Act, 1872 to re-examine the witness. The order is based on surmises and conjectures and thus liable to be set-aside.

4. On the other hand, learned State counsel does not seriously oppose the prayer for re-examination of witness.

5. I have heard rival contentions of learned counsels for the parties and have gone through the case file.

6. It is axiomatic that Section 311 of the Cr.P.C. is a discretionary power vested in Court which has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meets the ends of justice. Reference may be had to V.N. Patil Vs. Niranjana Kumar¹. The Supreme Court in J.K. International Vs. State (Government of NCT of Delhi)² observed that an application under Section 311 Cr.P.C. cannot be dismissed merely on the ground that it will lead to filling in the loopholes of the prosecution case. Power must be

¹ (2021) 3 SCC 661

² (2001) 3 SCC 462

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exercised wherever the Court finds that any evidence is essential for the just decision of the case and is not constrained by the closure of evidence.

6. Trite law it is that procedure is a handmaid of justice and, ought not to be given precedence at the cost of subjugation of substantive justice. The valuable right of litigants to establish their cases by leading evidence ought not to be taken away by the Court except in a case of their deliberate omission/failure to adduce the same earlier. In the instant case, prejudice would indeed be caused to petitioner herein, unless afforded an effective opportunity to re-examine PW-2 Randhir Singh which in fact seems necessary for a just decision of the case. Trial in the matter may lead to unjust consequences in the absence of an opportunity to accused/petitioner to re-examine proposed witness, notwithstanding that he has already been examined on material points in the case on 07.10.2016 and cross examined on 04.11.2016.

6. For the foregoing reasons, in order to meet the ends of justice and to arrive at a just decision of the case, I deem it appropriate to grant on effective opportunity to petitioner to re-examine the proposed witness. Accordingly, present petition is allowed and the impugned orders dated 27.08.2018 and 04.05.2019 are set aside. Learned Court below is directed to given one effective opportunity to petitioner to re-examine the proposed witness.

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

(ARUN MONGA)
JUDGE

September 15, 2023

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No