

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

**CRR No. 521 of 2017
Reserved on: 25.07.2023
Pronounced on: 20.10.2023**

Manoj Kumar

... Petitioner

Versus

State of Haryana and Others.

... Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Shalender Mohan, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

None for respondent Nos. 2 to 16.

SANJIV BERRY, J.

Present revision petition has been preferred by the petitioner-complainant against order dated 31.01.2017 passed by learned Additional Sessions Judge, Hisar vide which application under Section 311 Cr. P.C. for calling additional evidence for examination of Laxmi Devi d/o Gulab r/o Puthi Samain Tehsil Hansi District Hisar was dismissed.

2. Brief facts of the case are that the complainant lodged a FIR No. 198 dated 03.06.2012 (Annexure P-1) under Section 147, 149, 506 IPC and under Section 3(1) (10), S.C.S.T. Prevention of Atrocities Act at Police Station Narnaund, alleging that he was in love affair with Laxmi d/o Gulab Singh agitated due to this fact, all the accused in conspiracy had called him

to Chopal on 01.06.2012 where his face was blackened and fine of ₹21,000/- was imposed and he was ordered to be thrown out of the village forcibly for next 11 years besides being abused with caste remarks.

3. After completion of investigation, challan was presented in Court and the trial commenced. During the course of trial the petitioner filed application (Annexure P-3) under Section 311 Cr.P.C for calling Laxmi d/o Gulab in the witness box. After taking reply and considering the arguments, the learned trial Court dismissed the application vide the impugned order dated 31.01.2017 and aggrieved by the same the present petition has been preferred.

4. It is inter alia contended by the learned counsel for the petitioner that the petitioner happens to be the complainant of the case and the complainant being aggrieved by the acts and conduct of the accused had got the FIR registered and after completion of investigation challan was presented in Court. He submits that during the course of trial necessity was observed for examining the Laxmi Devi as witness in the case and accordingly an application under Section 311 Cr.P.C was moved which however, has been dismissed by learned trial Court vide the impugned order dated 31.01.2017 without considering the same in the legal perspective. He submits that the examination of Laxmi Devi as witness is essential for just decision of the case, hence prayed for acceptance of the petition.

5. Before proceeding further, a glance at provision contained under Section 311 Cr.P.C. is important which reads as under:-

“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. After considering the submissions made by learned counsel for the petitioner and perusing the record it transpires that the petitioner had preferred the application under Section 311 Cr.P.C for examination of Laxmi Devi daughter of Gulab Singh in the witness box. It is not disputed that the instant application has been moved by the petitioner after the evidence of the prosecution has been closed by the trial Court and the case was fixed for defence evidence. Apart from the application being moved at a belated stage, it is also worth mentioning that on the basis of FIR lodged by the complainant-petitioner after thorough investigation challan has been presented in Court, charge framed and the trial commenced, during the course of which prosecution witnesses have been examined and thereafter the statements of accused under Section 313 Cr.P.C have also been recorded.

7. Admittedly, aforesaid Laxmi Devi has never been cited as witness in the case of prosecution nor even as per the allegations of the complainant she was present at the time of alleged occurrence, so in these circumstances her examination could not be relevant in any manner for the just decision of the case. Even during the course of arguments learned counsel for the petitioner could not point out as to how her examination is relevant for the just decision of the case especially when she is neither witnesses to the occurrence nor has been cited as a witness by the

prosecution. Once it is found that the said Laxmi Devi is neither cited as witness nor she happens to be witness to the alleged occurrence, therefore, the learned trial Court has rightly declined the request of the petitioner for calling her witness. Further considering the fact that the application has been moved at the belated stage when the trial is at the stage of defence evidence, no case is made out in favour of petitioner for allowing such application.

8. In the light of the Provision contained in Section 311 Cr.P.C, no doubt the Court under this Provision has wide power to recall any witness, or to examine any person, through summon as a witness during course of inquiry, trial or other proceedings pending before the Court but the same has to be exercised with due caution, taking into consideration the facts and circumstances of each case and only if, the evidence of such person appears to be essential for the just decision of the case. It is well settled that the power conferred under Section 311 Cr.P.C should only be invoked by the Court to meet the ends of justice, that too for strong and valid reasons and with great caution and circumspection. Applying these principles to the facts and circumstances of the present case, it is observed that the witness proposed to be examined by the petitioner by moving application under Section 311 Cr.P.C, namely Laxmi, daughter of Gulab Singh, is admittedly neither a witness to the occurrence, nor has she been cited as witness by the prosecution, therefore, how her examination as witness in the trial would lead the trial Court to arrive at just decision of the case is certainly beyond imagination. The learned counsel for the petitioner also during course of arguments failed to explain as to how the examination of the proposed witnesses would in any manner help the learned trial Court in arriving at the

just decision of the case. More so, the instant application has been moved by the petitioner at the fag end of the trial when the case is for leading defence evidence.

9. Resultantly, considering all these facts and circumstances, it is observed that there is no infirmity or illegality found in the impugned order so as to call for interference of this Court. As a consequent, finding no merit in the petition the same is hereby dismissed.

10. Any observation made above shall not be construed as opinion of this Court on the merits of the case

(SANJIV BERRY)
JUDGE

20.10.2023
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |