

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-37434-2022 (O&M)

Date of Decision: 20.03.2023

Vishwas Pandey

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: - Mr. Ruhani Chadha, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Mr. Kunal Dawar and Mr. Mayanak Aggarwal, Advocates
for respondent No. 2-Complainant.

ASHOK KUMAR VERMA, J. (ORAL)

CRM-33865-2022

Prayer in this application filed under Section 482 Cr.P.C. is
for impleading Devendra Nagpal-complainant as respondent No. 2 being
a necessary party for proper adjudication of the case.

Heard.

For the reasons stated in the application which is supported
by an affidavit, the same is allowed and applicant-Devendra Nagpal-
complainant, is hereby impleaded as respondent No. 2. Amended memo
of parties filed along with the application is taken on record.

CRM-M-37434-2022

1. Through this petition filed under Section 482 Cr.P.C., prayer
has been made for quashing of impugned order dated 07.07.2022

(Annexure P-4) passed by learned Sessions Judge, Faridabad, in case FIR No. 761 dated 09.11.2018 registered under Section 302 IPC and Section 25 of the Arms Act, 1959 at Police Station Mujesar, District Faridabad, whereby application moved by the prosecution under Section 311 Cr.P.C. for summoning additional witnesses has been allowed.

2. Briefly, the petitioner earlier was working in Tata Steel Processing and Distribution Limited, Faridabad. On the basis of one complaint made against him of having assaulted a colleague, he was charge-sheeted and inquiry was held against him in which he was held guilty. Thereafter, the petitioner was discharged from the service. The complaint of assault was made by Sandeep Kumar Singh which was forwarded to the Management by deceased-Arindam Pal and inquiry was conducted by Subhomoy Majumder. Aggrieved with the inquiry report, the petitioner shot dead Arindam Pal in the premises of the company. During the course investigation, the proceedings of the inquiry conducted against the petitioner were obtained by the Investigating Officer, but due to oversight, only some of the documents pertaining to the petitioner and his employment were placed on record but other documents could not be placed on record. The prosecution through learned Public Prosecutor moved an application under Section 311 Cr.P.C. to examine Sandeep Kumar Singh, who was assaulted by the petitioner, Sh. Subhomoy Majumder, who conducted the inquiry against the petitioner and Sh. Anand Vivek, Head (HR), Tata Steel Processing and Distribution Limited, as additional witnesses, which was allowed by the trial Court vide order impugned herein. Hence, the present petition.

3. Learned counsel for the petitioner, *inter alia* contends that the trial Court has erred in allowing the application under Section 311 Cr.P.C. vide impugned order dated 07.07.2022 (Annexure P-4) as the same was filed just to delay the matter. He further submits that the provisions of Section 311 Cr.P.C. should not be allowed to be used to fill lacunae in the case. The names of aforesaid additional witnesses who were sought to be examined by the prosecution were never mentioned in the list of witnesses, at the time of preparation of challan and now after a gap of 04 years, the prosecution wants to examine the said additional witnesses. The prosecution in order to prove its case had moved the application under Section 311 Cr.P.C. for summoning and examining the aforesaid witnesses, after recording of statement under Section 313 Cr.P.C. Learned counsel contends that a great prejudice will be caused to the petitioner, in case, the prosecution is allowed to lead additional evidence at such a belated stage and to fill up the lacuna. In support of his contentions, learned counsel for the petitioner has relied upon judgments in **(i) CRM-M Nos. 30860, 30863 and 30864-2017, Sandeep Kumar Vs. State of Punjab and others, decided on 28.01.2020** and **(ii) Criminal Appeal No. 15 of 2019, Swapan Kumar Chatterjee vs. Central Bureau of Investigation, decided on 04.01.2019.**

4. On the other hand, learned counsel for the State and learned counsel for respondent No. 2-complainant submit that examination of the aforesaid witnesses is essential for just decision of the case as they were left out due to some oversight. The documents pertaining to inquiry too are to be led in evidence and no prejudice would be caused to the

petitioner, rather, it will help in conducting fair trial. In support of his contentions, learned counsel for respondent No. 2-complainant has relied upon judgment in *(i) Varsha Garg vs. The State of Madhya Pradesh and others, 2022(4) RCR (Criminal) 328; (ii) V.N. Patil vs. K. Niranjana Kumar and others, 2021(2) RCR (Criminal) 310; (iii) CRR-8-2017, Sukhjinder Singh vs. State of Punjab, decided on 09.08.2019; (iv) Rajaram Prasad Yadav Vs. State of Bihar and another, 2012(3) RCR (Criminal) 726; (v) Iddar and others vs. Aabida, 2007(3) RCR (Criminal) 909; (vi) Rajendra Prasad vs. The Narcotic Cell through its Officer-in-charge, Delhi, 1999(3) RCR (Criminal) 440 and (vii) Sree Venkateswara Enterprises Vs. G. Rajasekharan Nair, 2006(4) RCR (Criminal) 993.*

5. I have heard learned counsel for the petitioner and have gone through the paper book.

6. Admittedly, in the case in hand, the petitioner was earlier working in Tata Steel Processing and Distribution Ltd. Faridabad. An inquiry was conducted against the petitioner on the basis of complaint made against him for assaulting his colleague, namely; Sandeep Kumar Singh. The petitioner was charge-sheeted. In the said inquiry, the petitioner was held guilty and was discharged from service. The said complaint of assault moved by Sandeep Kumar Singh, was forwarded to the Management by deceased-Arindam Pal and inquiry was conducted by Subhmoy Majumder. Aggrieved with the inquiry report, the petitioner shot dead Arindam Pal, in the premises of the company. By filing the application under Section 311 Cr.P.C., the prosecution wants to examine

aforesaid Sandeep Kumar Singh, who was allegedly assaulted by the petitioner; Subhomoy Majumder, Inquiry Officer and Anand Vivek, Head (HR), to prove the inquiry report and other documents. Some of the documents pertaining to employment of the petitioner have already led in evidence by the prosecution and it appears that documents pertaining to complaint and subsequent inquiry have been left out due to oversight or by mistake. However, the mistake, if any, is not such which would dis-entitle the prosecution to lead the evidence. It is well settled that such a mistake or oversight cannot be treated as an irreparable lacuna or no party in trial can be foreclosed from correcting errors.

7. For ready reference, 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."

8. It is apparent from the above quoted provision 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. More so, the object underlying Section 311 Cr.P.C. 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.

9. Fair trial is the main object of criminal procedure, and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same. The aforesaid view was strengthened by various judgments in *Talab Haji Hussain v. Madhukar Purshottam Mondkar & Anr.*, AIR 1958 SC376; *Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors.* AIR 2004 SC 3114; *Zahira Habibullah Sheikh & Anr. v. State of Gujarat & Ors.*, AIR 2006 SC1367; *Kalyani Baskar (Mrs.) v. M.S. Sampooram (Mrs.)* (2007) 2 SCC 258; *Vijay Kumar v. State of U.P. & Anr.*, (2011) 8 SCC 136; and *Sudevanand v. State through C.B.I.* (2012) 3 SCC 387.

10. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, the following principles will have to be borne in mind by the Courts:

- a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the

Court for a just decision of a case?

- b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.
- d) The exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.
- h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or

a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

- k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.
- l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.
- m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.
- n) The power under Section 311 Cr.P.C. 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 care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

11. Since the object is to do complete justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty. It is apparent that the names of proposed witnesses i.e. Sandeep Kumar Singh, Sh. Subhomoy Majumder and Sh. Anand Vivek, were never mentioned in the list of witnesses, at the time of preparation of challan, due to some

mistake or oversight. Their examination is very much essential to prove the inquiry report for the proper decision of the case. There is no illegality or perversity in the order dated 02.11.2022 passed by the learned Judicial Magistrate Ist Class, Hisar, and, thus, the trial Court was justified in allowing the application under Section 311 Cr.P.C. Further, no prejudice has been caused to the petitioner-accused as application under Section 311 Cr.P.C. was moved by the prosecution after recording his statement under Section 313 Cr.P.C.

12. Keeping in view of aforesaid principles in mind, the facts and circumstances of the case and also the settled principles of law, the instant petition is bereft of any merit and the same is accordingly dismissed. Impugned order dated 02.11.2022 passed by the learned Sessions Judge, Faridabad, allowing the application under Section 311 Cr.P.C., is upheld.

20.03.2023

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**(ASHOK KUMAR VERMA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No