

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

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2023:PHHC:097971

CRM-M-36548-2023

Date of decision: July 31st, 2023

Karamjit Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Inderpreet Singh Kooner, Advocate
for the petitioners.

MANJARI NEHRU KAUL, J.

The petitioners are impugning the order dated 11.04.2023 (Annexure P-4) passed by learned Chief Judicial Magistrate, Fatehgarh Sahib in case CHI No.124 of 2018 titled as State Versus Karamjit Singh and another (wrongly mentioned as SBI Versus Karamjit Singh and Anr. in impugned order) arising out of FIR No.155 dated 04.11.2017 under Sections 323, 324, 326 and 34 of IPC, registered at Police Station Sirhind, District Fatehgarh Sahib, whereby an application under Section 311 Cr.P.C. moved by the petitioners/accused for recalling PW complainant Balwinder Singh and PW Dr. Rajnish Kumar for their further cross-examination was dismissed and impugned order dated 13.07.2023 (Annexure P-6) passed by learned Additional Sessions Judge, Fatehgarh Sahib in case titled as State Versus Karamjit Singh and another bearing CRR No.47 of 2023, whereby revision preferred by the petitioners was also dismissed.

2. Learned counsel for the petitioners submits that the trial Court had erroneously dismissed the application filed by the petitioners under Section 311 Cr.P.C. without appreciating the facts in the correct perspective. Learned counsel while drawing the attention of this Court to the testimony of both the above-mentioned witnesses i.e. complainant Balwinder Singh and PW-2 Dr. Rajnish Kumar, which have been annexed as Annexures P-1 and P-2, submits that inadvertently, the previous counsel who had been engaged by the petitioners, failed to put certain important questions with respect to injuries sustained by the complainant party to either of these witnesses. Learned counsel submits that the petitioners had now engaged a new counsel and the said questions which are now being sought to put qua the nature, time etc. of the injury would be crucial to demolish the prosecution case else it would lead to miscarriage of justice. Learned counsel, therefore, prays for setting aside the impugned orders and both the complainant and PW-2 Dr. Rajnish Kumar be recalled for their cross-examination. In support, reliance has been placed by learned counsel for the petitioners upon ***P. Sanjeeva Rao Versus State of A.P. 2012 (3) R.C.R. (Criminal) 653.***

3. I have heard learned counsel for the petitioners and perused the relevant material on record.

4. No doubt, Section 311 Cr.P.C. empowers the Court to summon or examine any person as a witness at any stage of inquiry or trial or other proceedings under the Code, however, the said power must be exercised by the Court after due application of judicial mind.

5. A perusal of the material on record reveals that the evidence of PW-1 Balwinder Singh was recorded on 15.10.2018, 26.10.2018 and finally on 04.01.2019. Similarly, the evidence of PW-2 Dr. Rajnish Kumar was recorded on 26.10.2018. Prior to the application in question, an application under Section 311 Cr.P.C. for recalling of PW-1 Balwinder Singh for further examination, was also filed by the petitioners, on identical grounds, which was dismissed by the trial Court vide order dated 03.02.2021. It is a matter of record that in the earlier application filed by the petitioners, no prayer for recalling of PW-2 Dr. Rajnish Kumar had been made. Furthermore, the application in question was much after i.e. almost four years, the evidence of PW-1 and PW-2 had been recorded and two years after the earlier application was dismissed by the trial Court. Therefore, it is abundantly clear that ample opportunities were availed of, by the petitioners for cross-examining both the witnesses. Rather, it appears that successive applications under Section 311 Cr.P.C. are being filed just to delay the conclusion of the trial which has been pending since the year 2017. The Hon'ble Supreme Court in ***State of Haryana Versus Ram Mehar and others 2016 (8) SCC 762*** while dealing with similar facts has observed as under:-

“38. At this juncture, we think it apt to state that the exercise of power under Section 311 Cr.P.C. can be sought to be invoked either by the prosecution or by the accused persons or by the Court itself. The High Court has been moved by the ground that the accused persons are in the custody and the concept of speedy trial is not nullified and no prejudice is caused, and, therefore, the principle of magnanimity should apply. Suffice it to say, a criminal trial does not singularly centres around the accused. In it there is

involvement of the prosecution, the victim and the victim represents the collective. The cry of the collective may not be uttered in decibels which is physically audible in the court premises, but the Court has to remain sensitive to such silent cries and the agonies, for the society seeks justice. Therefore, a balance has to be struck. We have already explained the use of the words “magnanimous approach” and how it should be understood. Regard being had to the concept of balance, and weighing the factual score on the scale of balance, we are of the convinced opinion that the High Court has fallen into absolute error in axing the order passed by the learned trial Judge. If we allow ourselves to say, when the concept of fair trial is limitlessly stretched, having no boundaries, the orders like the present one may fall in the arena of sanctuary of errors. Hence, we reiterate the necessity of doctrine of balance.”

6. The judgment in *P. Sanjeeva Rao's case (supra)* relied upon by learned counsel for the petitioners would not come to his rescue being distinguishable on facts as in that case, the right to cross-examine the witness was not reserved as a result of which the prosecution witnesses were not cross-examined at all on account of the mistake of the counsel, whereas in the case in hand, it is a matter of record that all the prosecution witnesses had been cross-examined extensively by the counsel for the petitioners.

7. As a sequel to the above, this Court does not find any merit in the present petition. The same, therefore, stands dismissed.

8. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

July 31st, 2023

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**(MANJARI NEHRU KAUL)
JUDGE**