

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

126

CRM-M-40565-2023 (O&M)

Date of decision: 18.08.2023

Daljit Singh @ Kala

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Anil Kumar Garg, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. Present petition has been filed for quashing of impugned orders dated 18.05.2023, 25.07.2023 passed by the learned Additional Sessions Judge, Ludhiana vide which no opportunity was given to the counsel for the petitioner to cross-examine the material witnesses and order dated 07.08.2023, whereby the application filed under Section 311 CrPC has been dismissed.

2. Briefly put, the FIR No. 253 dated 06.09.2021 was registered under Sections 379-B(2), 511, 34 IPC at Police Station Salem Tabri, District Police Commissionerate Ludhiana against unknown persons of having tried to snatch the mobile phone from the son of the complainant, who when resisted the said attempt, was hit on his stomach with a sharp edged weapon. The said unknown persons were travelling on a Jupiter scooter and when the boy raised an alarm, they fled the spot. The names of the accused surfaced during the investigation.

3. Learned counsel would contend that in the order dated 06.07.2023

passed by this Court in the petition filed for grant of regular bail, a direction has been issued to the trial Court to complete the prosecution evidence by 31.07.2023, else the petitioner can seek bail. In view of the above, the trial Court is proceeding at a fast pace in the matter, a consequence of which was that the petitioner did not even get a fair opportunity to cross-examine the two witnesses, namely ASI Satnam Singh and Gurmail Singh, whose statements were recorded, when the petitioner was produced through Video Conferencing, for which reason his learned counsel was unaware about the said proceedings. He seeks just one opportunity for the aforesaid purpose, as they are material witnesses, one of them being the investigating officer and other is *fard* witness of the case. Learned Counsel also states on instructions that the petitioner would not be seeking the concession of bail, due to the case now being adjourned, as it is due to his own request, to enable him to cross-examine the witnesses. He, accordingly, prays for the present petition to be allowed.

4. On receipt of advance notice, Mr. HS Sullar, Sr. DAG, Punjab accepts notice. He though opposes the petition, however has no serious objection for grant of only one opportunity to the accused-petitioner to cross-examine the two official witnesses, if it is subject to costs.

5. Heard.

6. It would be apposite to refer to the provision of Section 311 CrPC, before delving into the issue involved in the present case:

“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.”

7. Evidently, there are two aspects in the afore referred provision namely; that the power can be exercised by any Court at any stage of the proceedings and equally if not more important is the usage of word ‘shall’ in the second part, that makes it incumbent upon the court to summon and examine all persons whose evidence appears to be essential to the just decision of the case. The purpose behind exercise of powers under Section 311 of the Code of Criminal Procedure by the Court is not to fill in lacunae in the evidence led by the prosecution or to support the defence but to discover the relevant facts or to obtain proper proof of such facts for arriving at a just decision of the case. It is ultimately with the Court of facts to place reliance on the testimony of witness which would be based on the quality of their evidence, the truthfulness in it and confidence which it inspires. The only consideration which should weigh with the Court is to see that justice is done.

8. It is apt to refer to the order dated 18.05.2023 passed by the trial Court, which reads thus:

“Accused Daljit Singh has been produced by the jail authorities via VC. He is remanded to judicial custody till 25.07.2023 and be produced on the said date.
PW4 ASI Satnam Singh and PW5 ASI Gurmail Singh are present and examined.
No other PW is present. Fresh summons to PWs at serial No.10 and 12 be issued for 25.07.2023.
Long adjournment is granted due to large number of pendency of Session trials in this court.”

9. Further the order dated 25.07.2023 passed by the trial Court, by

which the prosecution evidence was closed reads thus:

“Accused Daljit Singh has been produced by the jail authorities via VC. He is remanded to judicial custody till 31.07.2023 and be produced on the said date.

PW6 Gurleen Kaur is present and examined.

PW7 Dr. Yashi Gupta is examined via VC.

Ld. APP for the State has given up the PW C Gursahibpreet Singh being unnecessary.

Ld. APP for the State tender into evidence attested copy of bed head ticket of complainant Shivam Yadav and closed its prosecution evidence.

Now to come up on 31.07.2023 for recording the statement of accused U/s 313 CrPC.”

10. The trial Court vide order dated 07.08.2023 dismissed the application filed by the petitioner under Section 311 CrPC, the operative part whereof reads thus:

“Heard. Record perused. From perusal of the record it revealed that ASI Satnam Singh, No.2246/Ldh, P.S. Tibba, Ludhiana was examined-in-chief as PW4 on 18.05.2023 and ASI Gurmail Singh, No.618/Ldh, P.S. Salem Tabri, Ludhiana was also examined as PW5 on the said date. One of the accused was produced via VC on the said date and other accused on bail appeared in person. Despite waiting the counsel to come for cross-examination, when none turned up, the cross-examination of these witnesses was treated as nil. Sufficient opportunity was granted to the accused and their counsel to cross-examine the witness.

Moreover, in this case the accused has approached the Hon’ble High Court and in CRM No.29754 of 2023 vide order dated 06.07.2023, the Hon’ble High Court has directed this Court to conclude the prosecution evidence by 31.07.2023 and to conclude the trial by 14.08.2023. So, when the case was “Time Bound” it was the duty of the accused or their counsel to act diligently and to cross-examine the witnesses. Accused has failed to avail this opportunity on 18.05.2023 and the cross-examination of PW4 ASI Satnam Singh, No.2246/Ldh, P.S. Tibba and PW5 ASI Gurmail Singh, No.618/Ldh, P.S. Salem Tabri, Ludhiana was treated as nil. Now, no grounds are made out to recall the said witnesses for their cross-examination. Hence the application in hand is without any merits and therefore stands dismissed.”

11. Hon'ble The Supreme Court in **Godrej Pacific Tech. Ltd. vs. Computer Joint India Ltd.**, 2008 (3) RCR 897, observed and held that, "The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequence, the first part gives purely discretionary authority to a criminal court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon anyone as a witness, or (b) to examine any person present in the court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts."

12. Pertinently, cross-examination is not only a form of procedure but matter of substance. The truth of the evidence of witness can only be tested by

way of his cross-examination. A right valuable, as an accused puts his version to assail the correctness of the statement of the said witness, who deposed against him. Taking away of it, would severely be prejudicial to him. In the present case, the petitioner, was unable to exercise it, to cross-examine two material witnesses, they being the Investigating officers of the case, on account of the fact that he having been produced through the mode of video conferencing, his learned Counsel did not come to know of it and the witnesses were examined in the said hearing. A reference in this regard can be made to the judgment of the Hon'ble Supreme Court in the case of **Rafiq vs. Munshilal** AIR 1981 SC 140, wherein it was observed that, a party should not suffer injustice for the inaction or default of his chosen advocate.

13. It is the duty of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. Failure to cross-examine the material witnesses and further dismissal of the application under Section 311 CrPC on the ground that the the counsel for the petitioner had not turned up for the same and that too at a stage when the prosecution evidence was closed, amounts to penalising the accused, who is otherwise already in custody. Hon'ble The Supreme Court in the case of **Iddar vs. Aabida**, (2007) 11 SCC 211, in context of Section 311 CrPC, observed that, "It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast

upon the Court to arrive at the truth by all lawful means...”

14. 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 persons right to fair trial be jeopardised. 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.[See **Natasha Singh vs. CBI (State)** 2013 Cr.L.R.(SC) 582].

15. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. [See **Swapan Kumar Chatterjee vs. Central Bureau of Investigation** (2019) 14 SCC 328].

16. This Court, after considering the facts and circumstances of the case in light of the exposition of law, deems it appropriate in the interest of justice, to grant its indulgence in the matter.

17. Accordingly, impugned orders dated 18.05.2023, 25.07.2023 and 07.08.2023 are hereby set aside, subject to costs of Rs.10,000/- to be deposited with the trial Court, which will forthwith be disbursed to the complainant.

18. The trial Court is directed to grant one effective opportunity to the petitioner to complete the cross-examination of prosecution witnesses, namely, ASI Satnam Singh and Gurmail Singh, on the next date of hearing or any other

subsequent date, as convenient to the Court after issuance of summons to them in accordance with law, with due intimation to the accused and his Counsel.

19. The present petition is disposed of.

(AMAN CHAUDHARY)
JUDGE

August 18, 2023
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No