

CRM-M-42890-2022 (O & M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-42890-2022 (O & M)

Date of decision: 26.05.2023

Surjit Singh

..... Petitioner

V/s

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arnav Sood, Advocate,
for the petitioner.

Ms. Ramta K Chaudhary, DAG, Punjab.

Mr. Harminder Singh, Advocate,
for respondents No.2 and 3.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing/setting aside of the order dated 18.07.2022 (Annexure P-5) passed by Judicial Magistrate Ist Class, Balachaur, District Shaheed Bhagat Singh Nagar in case FIR No.0068 dated 19.05.2017 under Sections 323, 325, 427 and 34 IPC registered at Police Station Balachaur, District Shaheed Bhagat Singh Nagar whereby the application under Section 311 Cr.P.C. filed by the petitioner for his re-examination has been dismissed.

2. The brief facts of the case are that an FIR No.0068 dated 19.05.2017 under Sections 323, 325, 427 and 34 IPC, Police Station Balachaur, District Shaheed Bhagat Singh Nagar came to be registered at the instance of the petitioner against respondents No.2 to 4 for having caused injuries to him. A copy of the aforesaid FIR is attached as Annexure

CRM-M-42890-2022 (O & M)

::2::

Cr.P.C. and framing of charges, the petitioner was examined on 21.11.2017 before the Trial Court as PW-1 and turned hostile. A copy of the statement of the petitioner-complainant is attached as Annexure P-2 to the petition. Thereafter, he moved an application under Section 311 Cr.P.C. for his re-examination on the ground that he had been threatened by respondents No.2 to 4 who had also taken his signatures forcibly on a compromise deed because of which he could not depose fairly and fearlessly. A copy of the said application dated 08.05.2018 is attached as Annexure P-3.

The respondents No.2 and 3 filed a reply to the application. A copy of the reply dated 22.08.2019 is attached as Annexure P-4.

3. The Trial Court dismissed the application under Section 311 Cr.P.C. primarily on the ground that no complaint had ever been made by the petitioner-complainant before any authority with regard to the alleged threats given by respondents No.2 to 4, and therefore, no ground was made out for allowing his re-examination. A copy of the order dated 18.07.2022 is attached as Annexure P-5.

4. The aforementioned order is under challenge in this present petition.

5. The learned counsel for the petitioner contends that the petitioner had turned hostile only account of duress and threats issued by the private respondents No.2 to 4. Under threat, he was coerced into signing a compromise. Despite the compromise having been signed under duress, the accused still did not honour the compromise because of which the petitioner was left with no alternative but to move the instant application under Section 311 Cr.P.C. He contends that the finding recorded by the Trial

CRM-M-42890-2022 (O & M)

::3::

on 31.07.2019 that he had first made an allegation regarding threats being issued by the accused is incorrect. In fact, after he turned hostile on 21.11.2017, on 08.05.2018 itself, the application under Section 311 Cr.P.C. was moved as was borne out from the record. He, therefore, prays that the impugned order (Annexure P-5) was liable to be set aside on this factual error committed by the Trial Court. Even otherwise, whether the offence was compoundable or not was not germane to the controversy. Therefore, the Trial Court had erroneously referred to the fact that the offence was compoundable and had denied the prayer of the petitioner. Reliance is placed by him on the judgments in the cases titled as '*Akash Verma and another versus State of Haryana and other, (CRM-M-35197-2018*', '*Khatta Singh versus CBI Chandigarh and others, 2018(3) RCR (Criminal) 708 and Khushwinder Singh and another versus State of Punjab 2007(1) RCR 9Criminal) 531*'.

6. The learned counsel for respondents No.2 and 3, on the other hand, contends that there is absolutely no evidence that the petitioner-complainant had ever informed the Court either at the time of recording of the examination-in-chief or cross-examination that he was or had been threatened. He had also not approached the police authorities prior to moving of the application under Section 311 Cr.P.C. that he was being coerced or pressurized by the private respondents. He, therefore, contends that the moving of the present application was an after thought. In fact, the petitioner-complainant had initially deposed fairly and had now moved this application to give a coloured version in Court so as to falsely implicate the respondents-accused. The other eye-witnesses had also turned hostile which

CRM-M-42890-2022 (O & M)

::4::

supports the first version of the petitioner-complainant recorded on 21.11.2017.

7. The learned counsel for the State has also supported the contentions raised by the private respondents.

8. I have heard the learned counsel for the parties at length and examined the record.

9. Before proceeding further, it would be apposite to refer to the provisions of Section 311 Cr.P.C. The same is reproduced hereinbelow:-

“Section 311 Cr.P.C.. 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”.

10. This Court in **‘Akash Verma and another versus State of Haryana and other, (CRM-M-35197-2018’**, held as under:-

10. From the arguments that have been addressed, two questions would arise for determination. Firstly, has the power under Section 311 of the Code been rightly exercised to recall the witnesses, given the fact that prosecutrix and her parents had themselves resiled in court and turned hostile? Secondly, would the application be maintainable in its present form as Section 225 of the Code clearly states that a trial is to be conducted before the Court of Session by the Public Prosecutor? In the instant case the application under section 311 of the Code has been instituted at the behest of the prosecutrix.

CRM-M-42890-2022 (O & M)

::5::

11. To understand the wide amplitude of powers that have been conferred upon the trial court Section 311 of the Code has to be read:

"311. Power to summon material witness, or examine person present. Any Court may, at any stage of any enquiry, 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."

*The touchstone for exercise of powers under Section 311 of the Code, is the satisfaction of the Court that the evidence of any person, which comes to its notice, is essential for the just decision of the case. This power, under Section 311 of the Code, can be exercised by the court at any stage of any inquiry, trial or other proceedings under the Code, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 of the Code. Furthermore, in *Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors* 2004 (2) RCR (Crl.) 836, the Supreme Court described the scope of Section 311 of the Code as under:-*

"Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither

CRM-M-42890-2022 (O & M)

::6::

to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

12. An argument has been by Mr. R.S. Cheema, Senior Counsel appearing on behalf of the petitioners, that there was no threat or coercion at the time the statement was given in the Court and since no case was made out, the prosecutrix and her parents rightly resiled from their statements given under Section 164 of the Code and they did not support the prosecution. It is argued that in case the application under section 311 of the Code is allowed, it would encourage persons to back out from statements recorded and make a mockery of the trial. This argument is without any merit. If a compromise was entered into as set up by the complainant, it can be said that it was an allurements to have the criminal prosecution dropped against the accused. This can be deduced from the reading of the compromise which has been placed on the record, where it is stated that both parties would make an effort to get Ashish Kumar released from the custody. This compromise was effected by the parents of Ashish Kumar and the prosecutrix. Without going into the question whether the compromise was in violation of the law or not, it would not be out of place to mention that parents in our Indian social structure would make all endeavor to restore the reputation of their daughters in society by arranging her marriage with the same person accused of such offence. In fact, if the terms of the compromise had been adhered to, the petitioners would have benefitted as well, since they were to be released from custody and the prosecutrix and family members would not have instituted the instant application seeking reexamination.

13. In para 41 of judgment rendered in Zahira Habibulla H Sheikh's case (supra), it has been held:

"Witnesses" as Benthem said: are the eyes and ears of justice. Hence, the importance and primacy of the

quality of trial process. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or ignorance or some corrupt collusion. Time has become ripe to act on account of numerous experiences faced by Courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable other corrupt practices ingenuously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice, to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the Court and justice triumphs and that the trial is not reduced to mockery. The State has a definite role to play in protecting the witnesses, to start with at least in sensitive cases involving those in power, who has political patronage and could wield muscle and money power, to avert trial getting tainted and derailed and truth becoming a casualty. As a protector of its citizens it has to ensure that during a trial in Court the witness could safely depose truth without any fear of being haunted by those against whom he has deposed. Some legislative enactments like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short the 'TADA Act') have taken note of the reluctance shown by witnesses to depose against dangerous criminals- terrorists. In a milder form also the reluctance and the hesitation of witnesses to depose against people with muscle power, money power or political power has become the order of the day. If ultimately truth is to be arrived at, the eyes and ears of justice have to be protected so that the interests of justice do not get incapacitated in the sense of making the proceedings before Courts mere mock

trials as are usually seen in movies.” (emphasis supplied). It was further held that. “It is not that in every case where the witness who had given evidence before Court wants to change his mind and is prepared to speak differently, that the Court concerned should readily accede to such request by lending its assistance. If the witness who deposed one way earlier comes before the appellate Court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier at the trial with the reasons for the earlier lapse, the Court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier and in an appropriate case accept it. It is not that the power is to be exercised in a routine manner, but being an exception to the ordinary rule of disposal of appeal on the basis of records received in exceptional cases or extraordinary situation the Court can neither feel powerless nor abdicate its duty to arrive at the truth and satisfy the ends of justice. The Court can certainly be guided by the metaphor, separate the grain from the chaff, and in a case which has telltale imprint of reasonableness and genuineness in the prayer, the same has to be accepted, at least to consider the worth, credibility and the acceptability of the same on merits of the material sought to be brought in.”

14. In the ultimate analysis, it is a duty cast upon a court to arrive at the truth and ensure that justice prevails. An application under section 311 of the Code may be allowed at any stage of trial, if the courts are of the opinion that examination of any such person appears to it to be essential to the just decision of the case. In the present case, it appears that father of Ashish Kumar (one of the accused) entered into a compromise that a marriage would take place between the prosecutrix and his son and all efforts would be made to secure his release from custody. On account of the compromise, the prosecutrix and family members resiled, the bail of the said accused was allowed and also the marriage date between the prosecutrix and the said accused was settled in terms of the compromise. All arrangements were made, however the accused did not turn up for the wedding and left the prosecutrix in a lurch, which precipitated the filing of the application under section 311 of the Code. Prima facie, it

appears the witnesses reslied on account of the allurement of marriage and a chance of a blemish free life for the prosecutrix and, therefore, it can safely be said that the statement given in court denying that the offence of rape was committed, was not a statement given freely or without any fear.

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19. An onerous duty that has been cast upon the courts is to ensure fair trial and to arrive at the truth. All the judgments as cited above, clearly delineate that there is no limit on discretion of court to recall and reexamined witness, even if the witness who deposed one way before the court now wants to depose and is prepared to give evidence which is clearly different from what had been stated earlier. Allowing witnesses to be recalled would be in consonance with the cardinal principle that the truth must prevail. To ensure fair trial, the court can consider the request and allow such witness to be called for re-examination. The second part of Section 311 of the Code also clearly states that the Court 'shall' summon and examine or recall and re-examine any such person if his evidence appears to it to be essential for the just decision of the case. The court has to be satisfied that such application is not a frivolous or vexatious application, only to delay the trial or fill up any lacunas in the trial.

20. As far as the question regarding the maintainability of the application filed by the complainant is concerned, Section 225 of the Code clearly specifies that it is the Public Prosecutor who is to conduct the trial Court of Session. However, in given facts and circumstances of the instant case, when the Public Prosecutor himself continued to cross examine the witnesses even after they had turned hostile and did not support the statement given under Section 164 of the Code in order to elicit the truth; and also did not raise any objection to application under Section 311 of the Code as filed by the complainant itself

raising the question of maintainability, it can be safely assumed that the said application had the concurrence of the Public Prosecutor. Even in the court today the State counsel submits that in order to arrive at the truth and to ensure a fair trial, he has no objection to the application being allowed.

*21. Once the court is of the opinion that to ensure fair trial, an application is to be allowed in order to elicit the truth, then it should not be bound down by technicalities. The accused in the instant case will have all opportunities to cross-examine the complainant and her parents. In the peculiar circumstances of the instant case, setting aside the impugned order and remanding the case back to the Sessions Court, to overcome this technicality for the Public Prosecutor to file an application under Section 311 of the Code, would not serve any fruitful purpose and would rather only delay the proceedings. This is particularly in view of the statement given that there was deemed acceptance of the Public Prosecutor to the application filed. A note is also taken of the fact that the Public Prosecutor did not challenge the impugned order. As has been held in *Khushwinder Singh, Khatta Singh and Zahira Habibulla H. Sheikh's cases (supra)* technicalities should not stand in the way of determining the truth, nor should an attempt to thwart a fair trial be countenanced.*

In ‘*Khatta Singh versus CBI Chandigarh and others, 2018(3)*

RCR (Criminal) 708, this Court held as under:-

“23. As far as the first objection of the counsel for the accused that the present application, at this stage when the evidence of the parties stands concluded, defence of the accused stands exposed and the case is at the stage of arguments, suffice it to say that keeping in view the language of the Section as also the law, which has been laid down by the Supreme Court and referred to above, the application would be maintainable prior to the pronouncement of the judgment. However, it would be a

different aspect whether the said application has to be accepted or rejected depending upon the facts and circumstances of each case.

24. Similar would be the position with regard to the objection of the counsel for the accused that the application of the petitioner would not be maintainable as he is neither the complainant nor has the application being filed by the prosecution. As is apparent from the language of the provisions itself, it is the discretion of the Court to be exercised in the given facts and circumstances whether the evidence, which is likely to be received by it from the person or persons as have been provided for under the Section itself, would be essential to the just decision of the case. It is open to the Court to suo moto exercise such powers and obviously, from whatever source, the Court receives information with regard to its satisfaction about the evidence and its essentiality for the decision of the case, does not really make any difference, it can be from any source. The Court has a duty to call the attention of the witness to it, whether it makes for or against the prosecution as the aim of the Court being neither to punish the innocent nor screen the guilty, but to administer the law correctly. Counsel seeks only for the success of his client but the Judge must watch that the justice triumphs, meaning thereby that the paramount principle underlying provision under Section 311 Cr. P.C., 1973 is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice.

25. The contention of the counsel for the accused that no specific date or incidence has been given as to when and by whom has the threat been given to the petitioner, there can be no doubt that the application is bereft of such details, however, reasons have been given and explained as to why the petitioner was unable to earlier approach the Court. The Court would not like to comment upon the documents, which have been

produced by the petitioner during his cross-examination before the Court, which are said to be addressed to various authorities pointing out the coercion and pressure exercised upon the petitioner by the prosecuting agency, suffice it to say that in case there had indeed been a threat to the petitioner, as he asserts now from the accused, such letters could have been addressed by him at the behest and under coercion and threat of the accused. It is obvious and apparent that when the petitioner gave his statement under sections 161 and 164 Cr. P.C., 1973 it was in the year 2007 whereas his evidence in Court was recorded in February, 2012 after a period of almost five years, during which period, it is asserted that the Dera prospered into a high profile Dera having a large following of blind disciples who would act as per the whims and fancies of the Dera Head. The Dera Head also, by now, gathered influence in the political arena where political leaders from almost all political parties frequently visited the Dera to pay their obeisance to the Dera Head as he had become a law unto himself, which is apparent from the fact that the security guards were provided to him, as per the assertions, by the Central Government and the Governments of the States of Punjab and Haryana. With this political clout, following increased influence and financial strength, sense of insecurity amongst the people like the petitioner cannot be ruled out and, in these circumstances, it cannot be said that the petitioner would not have been influenced with the changed circumstances especially when the Dera Head had devoted followers who would kill or die on his command, which is reflected, as per the assertions of the petitioner, on the killing of Ranjit Singh and Ram Chander Chhatarpati of which he is a witness. There can be no doubt that with the conviction of the Dera Head in the rape case of Sadhvis in the Dera, which resulted in wide spread violence in the States of Punjab and Haryana, which was with great effort and difficulty controlled

followed by confining the Dera Head in jail for 20 years as per the sentence, a sigh of relief would have felt by the petitioner.

26. It would not be out of way to mention here that the Dera Head was convicted on 25.08.2017 and the application under Section 311 Cr. P.C., 1973 has been preferred by the petitioner on 14.09.2017. There has not been any delay on the part of the petitioner in approaching the Court, the moment the threat, according to him, ceased. In the given facts and circumstances of the present case and in the light of the pleadings, it cannot be said that the petitioner was not influenced by the prevailing circumstances.

27. Reference to the judgment of this Court in the case of Khushwinder Singh (supra) can be made at this stage in which case also, earlier the prosecution witnesses turned hostile in Court and did not support the prosecution, however, subsequently, after the death of the accused, who had threatened them, an application was preferred by them praying for reexamination on the plea that they were under threat from one of the accused and, therefore, did not speak the truth. However, with the death of the accused, they have gathered courage to speak out the truth. The Court proceeded to accept the said plea rejecting the stand of the accused that allowing of an application under Section 311 of the Code would amount to filling up the lacunae in the prosecution case making out a totally new case against the accused. The Court, relying upon the case of Zahira Habibulla H. Sheikh (supra), had observed that the object of justice delivery system is to mete out 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. The Court had further observed that the witnesses are the eyes and ears of justice and if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and

paralyzed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or under threat or ignorance or some corrupt collusion. The said judgment, on principles, would be applicable to the facts of the present case as in the present case as well, the petitioner had no opportunity to speak the truth because of the circumstances and the position, in which he was put being beyond his control to speak the truth.

28. The assertion of the counsel for the respondent-accused that prejudice would be caused to the accused as they have disclosed the defence, suffice it to say that they would have ample opportunities to cross-examine the recalled witness. It would not be out of way to mention here that the earlier statements made by the petitioner would still be available on the record and it would be open to the trial Court to decide the case on the basis of evidence already on record as well as the additional evidence, which would be recorded on re-examination of the petitioner.

29. The trial Court, while passing the impugned orders, appears to have been over influenced by the facts that the trial is old and by allowing the present application, it would further delay the trial. There can be no doubt that the expeditious trial is the right of each person who is aggrieved or is an accused and who is interested in the case but merely because of the delay, justice should not be made the casualty. The primary aim and object of the Court is to do justice which is to punish the guilty and to protect the innocent, which ultimately depends upon the evidence.

30. On considering the facts and circumstances of the present case, this Court is of the opinion that the evidence of the petitioner is essential for the just decision of the case and,

CRM-M-42890-2022 (O & M)

::15::

therefore, the application deserves to be allowed for the reasons mentioned therein as the truth alone should prevail”.

In ‘*Khushwinder Singh and another versus State of Punjab, 2007(1) RCR (Criminal) 531*, this Court held as under:-

“10. Thus, it is well settled that these wide powers under Section 311 of the Code have been awarded to enable the court to find out the truth and to render a just decision of the case. The discovery and vindication and establishment of truth are main purposes of the existence of courts of justice. The object of justice delivery system is to mete out 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. (See Zahira Habibulla H. Seikh and another v. State of Gujarat and others, 2004(2) RCR (Criminal) 836 : 2004(3) Apex Criminal 46 : (2004) 4 SCC 158). The assurance of a fair trial is the first imperative of the dispensation of justice. (See Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 4 SCC 167). Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated. If the witnesses get threatened or are forced to give false evidence that also would not result in a fair trial. The failure to hear material witnesses is certainly denial of fair trial. "Witnesses", as Bentham said : are the eyes and ears of justice. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralysed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the court or due to negligence or under threat or ignorance or some corrupt collusion.

11. The Supreme Court in Zahira Habibulla's case (supra), has observed that time has become ripe to act on account of numerous experiences faced by courts on account of frequent turning of witnesses as hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clout and patronage and innumerable other corrupt practices ingeniously adopted to smother and stifle truth and realities coming out to surface rendering truth and justice to become ultimate casualties. Broader public and societal interests require that the victims of the crime who are not ordinarily parties to prosecution and the interests of State represented by their prosecuting agencies do not suffer even in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse of the edifice of rule of law, enshrined and jealously guarded and protected by the Constitution. There comes the need for protecting the witness. Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that ultimate truth is presented before the court and justice triumphs and that the trial is not reduced to a mockery. In such situation, the court has to play a vital role. Vast and wide powers have been conferred on the Presiding Officer of the court under Section 311 of the Code and Section 165 of the Evidence Act to elicit all necessary evidence by playing an active role in the evidence collecting process, because the ultimate object of the judicial system is to arrive at a truth.

12. It is also settled position of law that the power under the second part of Section 311 of the Code is not to be exercised in a routine manner, but is to be exercised in exceptional cases where the court feels that the re-examination of the witness is necessary for the just decision of the case. If the witness who

deposed one way earlier comes before the court with a prayer that he is prepared to give evidence which is materially different from what he has given earlier with the reasons for the earlier lapse, the court can consider the genuineness of the prayer in the context as to whether the party concerned had a fair opportunity to speak the truth earlier. In the instant case, the trial court has come to the conclusion that two prosecution witnesses, who earlier did not support the prosecution version, were not having fair opportunity to speak the truth as they were under the threat of the accused. Therefore, the court, while coming to the conclusion that re-examination of PW.5 Nand Kishore and PW.6 Vijay Kumar is necessary for the just decision of the case, has permitted them to be re-examined. In my opinion, re-examination of these two prosecution witnesses will not amount to filling lacunae in prosecution case and to cause any prejudice to the accused, as they will be given full opportunity to cross examine the re-called witnesses and secondly, the earlier statements made by these witnesses is not going to be erased and wiped out from the record of the case. The trial Judge is to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on re-examination of these two prosecution witnesses. While deciding the case on merits, the trial court will take into consideration all the evidence available on the record. (See Satyajit Banerjee and others v. State of W.B. and others, 2005(1) RCR (Criminal) 723 : 2005(1) Apex Criminal 333 (SC) : (2005) 1 SCC 115). The instant case is at the stage of prosecution evidence. The statements of the accused under Section 313 of the Code are yet to be recorded, therefore, the decision of the Supreme Court in Mir Mohd. Omar and others v. State of West Bengal, AIR 1989 Supreme Court 1785 (supra) is not applicable in the facts and circumstances of this case”.

CRM-M-42890-2022 (O & M)

::18::

11. A perusal of Section 311 Cr.P.C. would show that the Court may at any stage of an enquiry or Trial summon any person as a witness or recall or re-examine a person already examined if his evidence was essential for the just decision of the case. Therefore, the stage of an enquiry or Trial is irrelevant and such an order under Section 311 Cr.P.C. can be passed upto the pronouncement of the judgment.

The interpretation of Section 311 Cr.P.C. as given in the judgments (supra) are also to this effect that for the just adjudication of the case, a witness can be summoned, recalled and re-examined if his evidence appears to be essential for the just adjudication of the case. In fact, it is a duty cast upon the Court to arrive at the truth and to ensure that justice prevails. Where it appears that the witness has turned hostile on account of threats or allurements and subsequently, the said witness wants to depose truthfully/differently, he must be re-called and re-examined.

12. Coming back to the facts of the instant case, it is apparent that the parties are closely related. Therefore, the question of the petitioner-complainant not identifying the accused would only arise on account of either duress or some sort of allurements. In the instant case, a perusal of the application under Section 311 Cr.P.C. (Annexure P-3) would show that the petitioner-complainant was pressurized to sign a compromise so as to enable Amandeep Singh-respondent No.4/accused to travel abroad. In furtherance of the same, the petitioner did not support the prosecution case, Amandeep did travel abroad and is currently absconding. Subsequently, however, even the compromise entered into under duress was not adhered to by the accused side necessitating the filing of the instant application under Section 311

CRM-M-42890-2022 (O & M)

::19::

complainant is the real brother of Nirmal Singh-respondent No.2 and the uncle of Kulwant Singh (respondent No.3) and Amandeep Singh (respondents No.4) sons of Tarsem Singh, merely because no application was moved to any authority regarding threats meted out to him, would not be a reason enough to dismiss the instant application under Section 311 Cr.P.C. In fact, it appears to be a case wherein the petitioner-complainant was initially threatened and coerced into entering into a compromise and turning hostile in Court. After the respondents-accused obtained a statement (Annexure P-2) from him in their favour, they reneged from the terms of the compromise and only then did the instant application come to be filed.

13. It would also be apposite to mention here that re-examination of the petitioner would not amount to filling up of a lacuna in the prosecution case or cause any prejudice to the accused as they would be given full opportunity to cross-examine the recalled witness and even otherwise, the earlier statement made by the witness is not going to be erased and wiped out from the record of the case. The Trial Judge is to decide the case on the basis of the evidence already on record and the additional evidence which would be recorded on re-examination of the petitioner as a prosecution witness. Therefore, while deciding the case on merits, the Trial Court would take into consideration all the evidence available on the record.

14. In view of the aforementioned discussion, I find considerable force in the arguments raised by the learned counsel for the petitioner-complainant, and therefore, the order dated 18.07.2022 (Annexure P-5)

CRM-M-42890-2022 (O & M) ::20::

complainant immediately and thereafter, proceed to conclude the Trial as expeditiously as possible but not later than 03 months from the next date fixed before it.

15. The present petition is allowed in these terms.

(JASJIT SINGH BEDI)
JUDGE

May 26, 2023
sukhpreet

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