2023:PHHC:112877

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

****

CRR-1923-2023 (O&M)
Date of Decision: 28.08.2023

Hawa Singh and another **. . . . Petitioners**

Vs.

State of Haryana . . . . Respondent

****

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

****

Present: - Mr. Sanawar Ali, Advocate, for the petitioner.

****

DEEPAK GUPTA, J.

CRM-M-35962-2023

Application is allowed as prayed for.

CRM-M-35963-2023

This is an application to place on record documents Annexures P1 to P6 and to exempt from filing certified copies thereof.

Application is allowed.

Documents, Annexures P1 to P6, are taken on record.

CRR-1923-2023 (O&M)

Petitioners along with others are facing trial in the Court of Ld. JMIC, Ganaur, District Sonipat, in case FIR No.180 dated 10.06.2011 registered at Police Station Ganaur, District Sonipat under Sections 406, 419, 420, 467, 468, 471 and 120B IPC.

2. An application moved by the prosecution under Section 311 Cr.P.C., during the trial, was allowed vide impugned order dated 02.08.2023, which has been challenged by the petitioner before this Court.

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3. It is contended by ld. counsel that final arguments had been heard by the Court on 23.03.2022 and the matter was adjourned on many dates for pronouncement of the judgment, but later on, prosecution moved an application under Section 311 Cr.P.C., which has been allowed by way of the impugned order. It is contended that the concerned witness was not cited in the list of witnesses and the report of the FSL was very much in the knowledge of the Public Prosecutor and therefore, the impugned order is not justified, as it has caused prejudice to the case of the petitioners.

4. Notice of motion.

5. Mr. Vipul Sherwal, AAG, Haryana accepts notice on behalf of the respondent/State, who opposed the petition and justified the impugned order.

6. Section 311 Cr.P.C. 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.*

7. Bare perusal of the aforesaid provision would reveal that it contains two parts. Under the first part, any Court is empowered, at any stage of the inquiry, trial or other proceedings, to 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. Under the second part, it is mandatory for the Court to summon and examine or

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recall and re-examine any such person, if his evidence appears to it to be essential to the just decision of this case.

8. In ***State of Haryana Vs. Ram Mehar and others etc.,*** *2016(4) RCR (Criminal) 154,* Hon'ble Supreme Court has culled out the following principles to invoke Section 311 Cr.P.C.: -

> *"1. The exercise of the widest discretionary power under Section 311 CrPC should ensure that the judgment should not be rendered on inchoate, inconclusive and speculative presentation of facts, as thereby the ends of justice would be defeated.*
>
> *2. 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.*
>
> *3. The exercise of power under Section 311 CrPC 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.*
>
> *4. 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.*
>
> *5. The wide discretionary power should be exercised judiciously and not arbitrarily.*
>
> *6. 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.*
>
> *7. Exigency of the situation, fair play and good sense should be the safeguard, 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.*
>
> *8. 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*

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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.

9. The power under Section 311 CrPC 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-2013 (3) RCR (Criminal) 726: 2013(4) Recent Apex Judgment (RAJ) 354 Relied."

9. In the present case, as the perusal of the paper-book reveals, FIR was lodged on the complaint of one Jeet Singh, as per which he and his brother Randhir agreed to purchase certain land at the behest of accused Mani Ram, for an amount of ₹88 lakh. Sale deed was executed on 05.11.2007. Hawa Singh & Braj Pal signed the sale deed as witnesses. Later on, another sale deed was got executed with regard to 30 kanals 15 marla of land. However, complainant came to know that land in question was owned by someone else and that the real owner had expired way-back in 1993 and thus, Mani Ram in collusion with others had produced fake persons to get the sale deed executed and thus, defrauded the complainant and his brother of the huge amount of money.

10. Perusal of the impugned order reveals that during investigation, specimen signatures of the accused Hawa Singh and Satish Bhatia (present petitioners) were obtained and the same were sent to the FSL, Madhuban for comparison with signatures on the original registry.

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However, neither the Director, FSL was cited in the list of witnesses nor there was any reference of FSL report and it was in these circumstances that on application of the prosecution under Section 311 Cr.P.C., the Court had directed to summon Director, FSL, Madhuban so as to record his statement through V.C.

11. Having regard to the nature of allegations, ld. trial Court was justified in passing the impugned order, as examination of Director, FSL is necessary to reach at just conclusion of the case. As and when the evidence of a witness appears to be essential to the just decision of the case, the Court is bound to summon and examine or recall or re-examine any such person. Simply because the application under Section 311 Cr.P.C. was moved after the arguments had already been addressed as contended by counsel for the petitioner, it is no ground to set aside the impugned order, as order under Section 311 Cr.P.C. can be passed, at any stage.

12. Consequently, this Court finds no merit in the present petition. No illegality can be found in the impugned order passed by the trial Court.

Dismissed.

Pending application, if any, shall also stands disposed of.

(DEEPAK GUPTA)
JUDGE

28.08.2023
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1. Whether speaking/reasoned? ***Yes****/No*
2. Whether reportable? *Yes/No*

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