

CRM-M-48030-2022

1

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

112

CRM-M-48030-2022 (O&M)

Date of decision: 18.01.2023

SUKHWINDER SINGH

....Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Vikas Gupta, Advocate for the petitioner.

Mr. Manipal Singh Atwal, DAG Punjab.

Mr. Naresh Gopal Sharma, Advocate for respondent No.3.

AMAN CHAUDHARY. J.

Present petition has been filed for quashing of the impugned order dated 08.09.2022 passed by the learned SDJM, Patti vide which the trial Court has dismissed an application filed under Section 311 CrPC in FIR No.125 dated 26.10.2016 under Sections 304-A, 279, 427 IPC P.S. City Patti, District Tarn Taran.

Briefly put, the facts of the case emerging out from the FIR are that on 10.10.2010 at about 5 pm the petitioner was going towards Patti after meeting his sister. His nephew namely Manjit Singh was going towards Grain Market, Patti on his motorcycle. When they reached a little further from the garden, two young boys recklessly riding a motorcycle hit the motorcycle of the nephew of the petitioner due to which he got seriously injured and the two boys ran away from the spot. Manjit Singh was admitted

to Sandhu Hospital, Patti but because of the serious injuries suffered, he was

shifted to Guru Ram Das Hospital, near Gurdwara Saheda Sahib, thereafter to Sri Guru Ram Das Hospital, Wallan, Amritsar, where he died on 26.10.2016.

Learned counsel for the petitioner while referring to order dated 19.02.2020 contends that even though the witnesses ASI Gurjit Singh and ASI Sawinderpal Singh, who were the investigating officers having been served but did not appear for one reason or the other and Dr. Arshdeep Singh remained unserved, the Court did not make any effort to procure their presence despite they being material witnesses, essential for the just decision of the case. Rather on the other hand, on 26.02.2020 itself, i.e. after a week of the last order, the prosecution evidence was closed. Due to onset of Covid-19 pandemic, till the year 2021, only urgent cases were being taken up, as such the application under Section 311 CrPC was filed on 04.10.2022 by the prosecution seeking to summon ASI Gurjit Singh and ASI Sawinderpal Singh who were the investigating officers and Dr. Arshdeep Singh from Civil Hospital, Amritsar who conducted the post-mortem of deceased Manjit Singh but the same was wrongly dismissed. To buttress his arguments, he places reliance on the judgment passed by this Court in case of **Faqir Chand Vs. State of Punjab and others**, decided on 22.11.2022.

Notice of motion.

Mr. Manipal Singh Atwal, DAG Punjab accepts notice on behalf of respondent-State.

Mr. Naresh Gopal Sharma, Advocate accepts notice on behalf of respondent No.3 and submits that the challan was presented in the year 2017, whereafter, charges were framed on 19.09.2017. Number of opportunities

had been granted to the prosecution to examine the witnesses, however, the same was not done. Application was rightly dismissed by the trial Court and thus, prays for the dismissal of the present petition.

Heard.

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.”

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

It is apt to refer to the order dated 19.02.2020 passed by the Court, which reads thus:-

“No PW is present today. Notice issued to Hardev Singh, HC Salwinder Singh, Balraj Kaur and Bikram Singh received back duly served, however said witnesses did not turn up. Let they be summoned throughailable warrants for 26.02.2020, being last opportunity. Notice issued to ASI Gurjit Singh received back with the report that he is already bound down to go to Hon'ble Punjab And Haryana High Court. Notice issued to ASI Sawinder Singh received back that he is on leave from the department. Notice issued to ASI Rana Ranjit Singh received back unserved. Notice issued to Dr. Arshdeep Singh received back unserved. Let these witnesses be again summoned for 26.02.2020 through office of SSP Tarn Taran. It shall be last opportunity to the prosecution to conclude evidence. Learned APP for the State be notified about last opportunity.”

Further the order dated 26.02.2020, whereby the prosecution evidence was closed reads thus:-

“No PW is present despite last opportunity. Date is requested. The perusal of the file reveals that the challan in this case was presented on 04.05.2017 and the charge was framed on 19.09.2017. The prosecution seeks another opportunity for concluding his evidence without any bonafide contentions. Resultantly, the prosecution evidence is closed by order. Now, case stands adjourned to 02.03.2020 for recording the statement of accused under section 313 Cr.P.C.”

The learned trial Court vide order dated 8.9.2022 dismissed the application, the operative part whereof reads thus:-

“After hearing the submission raised by Ld. APP for the State and Ld. Defence Counsel and going through the material available on record this Court is of the view that application in hand deserves to be dismissed for the reasons to be recorded hereinafter. Perusal of the file shows that charge in this case against the accused was framed on 19.09.2017 and thereafter, almost 18 opportunities were given to prosecution for concluding its evidence. But the prosecution has failed to conclude its evidence after availing so much opportunities. Accordingly vide order dated 26.02.2020 passed by my

Ld. Predecessor, the evidence of the prosecution was closed by order. The plea taken by the prosecution that summons to these witnesses were not issued is not tenable because perusal of the file clearly shows that summons were issued to the above said witnesses by the Court before the evidence of the prosecution is closed by order. In this eventuality, this Court do not deem it appropriate to summon the above said witnesses as a prosecution witnesses at this stage. Furthermore, it is pertinent to mention here that the evidence of the prosecution was closed by order on 26.02.2020 and the instant application was filed on 04.10.2021 which goes to show that the present application appears to have been filed just to delay the proceedings of this case. With these observations, without expressing any word upon the merits of the present case, the application in hand stands dismissed and disposed off accordingly. Now to come up on 16.09.2022 for DWs.”

In the case of **Varsha Garg vs. State of Madhya Pradesh and others**, Criminal Appeal No.1021 of 2022 titled as, decided on 08.08.2022, Hon'ble The Supreme Court of India observed that “the statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.” Thus, in the present case, before closing of the prosecution evidence coercive steps should have been taken to secure the presence of the unexamined official witnesses i.e. two Investigating Officers and the Doctor, who conducted the postmortem of deceased Manjit Singh, as they are the material witnesses and their non-examination would be prejudicial to the prosecution case.

It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. Non examination of the material witnesses and

that the same has been filed to delay the proceedings and at a stage when the prosecution evidence was closed by order, amounts to penalising the complainant for no fault on his part. Hon’ble The Supreme Court in the case of **Iddar & others vs. Aabida & another**, 2007 (3) R.C.R. (Criminal) 909, in context of Section 311 Cr.PC, 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...”

Having considered the facts and circumstances of case in light of the provision of law and the afore-referred judgments, this Court finds merit in the present petition, the same thus, deserves to be allowed. Accordingly, the order dated 08.09.2022 passed by the learned SDJM, Patti is hereby set aside. One effective opportunity be granted to examine the remaining prosecution witnesses, namely, Dr. Arshdeep Singh, ASI Gurjit Singh and ASI Sawinderpal Singh, on the next date of hearing or any other date convenient to the Court on issuance of summons to them in accordance with law.

The present petition stands allowed.

January 18, 2023
S.Sharma(syr)

(AMAN CHAUDHARY)
JUDGE

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