

CRM-M-48925-2023 and
CRM-M-48283-2023 (O & M) -1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

150-2 cases CRM-M-48925-2023
Date of decision :-06.11.2023

MANMINDER SINGH @ MANMINDER SINGH SANDHU
...PETITIONER

VS

STATE OF PUNJAB ...RESPONDENT
CRM-M-48283-2023 (O & M)

SUKHDEV SINGH ...PETITIONER
VS

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Priyanshu Kamra, Advocate for the petitioner
in CRM-M-48925-2023.

Mr. Rajinder Singh, Advocate for the petitioner
in CRM-M-48283-2023.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

SUVIR SEHGAL, J.

1. This order shall dispose of both the above-mentioned petitions as both the accused-petitioners have approached this Court by way of separate petitions laying challenge to order dated 22.08.2023 passed by learned Judicial Magistrate Ist Class, Fazilka, vide which application dated 07.02.2023, filed by the State-respondent under Section 311, Cr.P.C. and

Section 91, Cr.P.C. for recalling PW-8, ASI Gurnam Singh, has been accepted.

2. For the sake of convenience, factual position is being noticed from CRM-M-48925-2023.

3. Briefly stating, FIR, Annexure P-4, has been registered on a complaint by Shamsher Singh claiming that he retired as a Manager from a Central Co-operative Bank and is doing farming. He had never given any guarantee to any person nor entered into any contract with the accused, but Sukhdev Singh (petitioner in CRM-M-48283-2023), who is his neighbor has mentioned his name in form No.M-75 as surety by forging his signature and mentioning the details of his land. It has been further stated that the complainant came to know of this development from a letter dated 29.11.2016, received from Tehsildar. After the registration of the FIR, investigation was carried out and a charge-sheet was filed against Nishan Singh and Manminder Singh (petitioner in CRM-M-48925-2023). Although, Sukhdev Singh was found to be innocent, but during the course of the trial, on an application moved by the prosecution, he alongwith some others were summoned as additional accused by order dated 27.02.2019.

4. Counsel for the petitioners have urged that after the evidence of 09 out of 26 prosecution witnesses was recorded, the trial had sufficiently progressed, prosecution moved a second application under Section 311, Cr.P.C. for recalling PW-8, ASI Gurnam Singh, to prove the statements of accused-petitioners and has also made a prayer under Section 91, Cr.P.C., for permission to bring on the judicial file, the original statements of the said accused. It has been argued that although PW-8, ASI Gurnam Singh, was

examined at length, the prosecution failed to produce the statements of the accused and by filing the present application, prosecution is trying to fill in a lacuna. It has been contended that the statements do not form a part of the charge-sheet and in any case, they cannot be read into evidence in view of the bar in Section 162, Cr.P.C. Reliance has been placed by counsel for the petitioners upon the judgments in Swapan Kumar Chatterjee Versus Central Bureau of Investigation (2019) 14 SCC 328, as well as upon Vijay Kumar Versus State of U.P. (2011) 4 RCR (Criminal) 208; Mukesh P. Meena Versus CBI, ACB, Mumbai, (Criminal Application No.544-2021, decided on 30.06.2021) and Yogendra Singh Dohrey Versus State of U.P. and others 2011 (6) RCR (Criminal) 1251. Another argument has been raised that the prosecution cannot be encouraged to file successive applications for recall of witnesses.

5. Advance copy of the petition has been served upon the State.

6. Upon instructions received, State counsel has opposed the petition by submitting that the application has been filed as an error was committed by the prosecution, which can be rectified under Section 311, Cr.P.C. While referring to the charge-sheet, State counsel has rebutted the submission of counsel for the petitioners and has asserted that the statements of the accused were recorded in the course of an enquiry and both the inquiry report and the statements from part of the charge-sheet presented upon conclusion of investigation.

7. I have considered the respective submission of counsel for the parties.

8. Before proceeding to consider the submissions made by counsel for the parties, it would be apposite to notice Section 311, Cr.P.C., which reads as follows:-

“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.”

9. An analysis of the above reproduced provision reveals its broad scope. The object of every criminal court is to discover the truth and to punish the guilty. Section 311, Cr.P.C. empowers that a Court, at any stage of inquiry, trial or other proceeding under the Code, can summon any person as a witness, or examine him in attendance, though not summoned as a witness, or recall and re-examine an already examined witness. The latter part of the provision provides that the Court shall summon and examine or re-call or examine any such person if his evidence appears to be essential for the just decision of the case.

10. As the powers conferred are very wide, they have to be exercised with great care, caution and circumspection. A Court has to form an opinion that for the just decision of the case, re-call or re-examination of a witness is necessary. Whether the recall is for filling of a lacuna or for the just decision of the case depends upon the facts and circumstances of the case as there is a very thin line of demarcation between filling up of a lacuna

11. Hon'ble Supreme Court in **Rajendra Prasad Versus Narcotic Cell through its Officer In-charge, Delhi**, (1999) 6 SCC 110, has held as under:-

“7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers under [Section 311](#) of the Code or under [Section 165](#) of the Evidence Act, 1872 by saying that the Court could not “fill the lacuna in the prosecution case”. A lacuna in the prosecution is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage “to err is human” is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such lapses or mistakes during the conducting of a case cannot be understood as a lacuna which a court cannot fill up.

8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting errors. 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. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

12. This provision came up for interpretation before the Supreme Court in **Swapan Kumar Chatterjee's case (supra)** and it has been held as under:-

“11. It is well settled that the power conferred under [Section 311](#) should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for re-examination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision should not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

13. Facts of the present case have to be examined in the light of the provision as well as the legal settled position.

14. The case of the prosecution is that ASI Gurnam Singh, PW-8, was examined, but due to inadvertence, statements of accused-petitioners, recorded during inquiry could not be put to him for proving the same on the judicial file, although, the statements are part of the police file. It is in these circumstances that application has been moved with the sole objective of covering up an unintended omission at the time of examination of the said official. The relevance of the statements of the accused and their admissibility is not required to be gone into at this stage and it would be examined by the Trial Court at the appropriate stage after the statements are brought on the record. It would therefore be inappropriate for this Court to

would depend upon the facts and circumstances as well as the other evidence on the record. The judgments relied upon by the counsel for the petitioners do not advance their case. Moreover, when PW-8, Gurnam Singh, is re-examined, the accused would have amply opportunity to cross-examine him.

15. The next argument raised by counsel for the petitioners that the prosecution has filed repeated applications under Section 311, Cr.P.C., deserves to be noticed and rejected. An examination of the earlier application filed by the prosecution, which has been appended as Annexure P-1 with CRM-M-48283-2023 as well as order dated 19.11.2019, Annexure P-2, passed thereon, shows that the prayer in this application was to summon record from the Office of Excise Department and in particular, form M-75 prepared in the name of Sukhdev Singh and Shamsher Singh as well as original affidavit of Manminder Singh, which was allowed by the Trial Court by order, Annexure P-2. It cannot be said that by the earlier application, the same witness had been summoned and the relevant material was not put to him.

16. In view of the above discussion, this Court is of the view that there is no merit in both the petitions, which are hereby dismissed.

17. Anything said hereinabove shall not be construed to be an expression of opinion on the merits of the case and the Trial Court shall proceed to conclude the trial un-influenced by any observation made herein.

06.11.2023
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(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No