

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-54246-2023

Date of Decision: *October 30, 2023*

Ankesh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

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

Vivek Puri, J.

1. The petitioner has assailed the order dated 14.02.2023 passed by the learned trial Court vide which the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (for short `Code`) to recall PW-1 Amit, has been dismissed.

2. The petitioner is facing trial for having committed the offence punishable under Sections 304-B, 498-A read with Section 34 of the Indian Penal Code (for short `IPC`), registered at Police Station Jhojhu Kalan, District Charkhi Dadri. The petitioner had submitted an application under Section 311 of the Code (Annexure P-8) for recall of PW1, namely, Amit son of Ramphal for further cross-examination.

It has been alleged that after the examination of the complainant, material witnesses have not supported the case of the prosecution and have made statements contradictory to the statement of the complainant. Accordingly, the recall of Amit, PW1, who is the complainant in the instant case, has been sought.

3. Learned counsel for the petitioner contends that therecall of Amit, PW1, has been sought to elaborate the facts in the instant case. After examination of the complainant, the statements of Rattan Singh, PW2, Om Parkash, PW3, Sonu, PW5, the uncles of the deceased and Anil, PW4, the cousin of the deceased, have been recorded, but they have not supported the prosecution version. The version given by these witnesses is contradictory to the version given by the complainant.

4. Section 311 of the Code enables the Court with the power to summon, recall and re-examine any witness, who has already been examined. The section confers a wide discretion on the Court to act as the exigencies of justice and the circumstances of the case may require. The power to recall a witness is wide and could be exercised at any stage, but the same cannot be exercised mechanically, without just and adequate reasons. At the end of the trial, exercise of such power is permissible only in exceptional situation. The Court can recall a witness in the event, the further

examination of the witness appears to be essential for the just decision of the case. However, it has also to be borne in mind that such power cannot be exercised to permit any of the parties to fill up lacuna in its case. There must be sufficient and reasonable material to justify for exercise of the discretionary power vested in the Court.

5. It is significant to note that the allegations against the petitioner are to the effect that his marriage was solemnized with the deceased on 25.11.2020. The petitioner along with the co-accused had been harassing the deceased and raising demand of dowry. The death has occurred otherwise than under normal circumstances within a period of less than 1 year of the marriage. While appearing in the witness box, Amit, PW1, the brother of the deceased has testified with regard to the allegations against the petitioner and the co-accused. Even the FIR has been registered at his instance. It appears that some of the witnesses have not supported the prosecution version and an attempt is being made by the petitioner to seek recall of Amit, PW1. Amit PW1 had appeared in the witness box on 03.12.2021 when his examination-in-chief was recorded. The cross-examination was deferred on the request of the accused. Thereafter, the cross-examination of Amit, PW1, was recorded on 04.03.2022. The statements of other witnesses have been recorded after a lapse of period of 10 months. Full

and effective opportunity was afforded to the petitioner to cross-examine Amit, PW1.

6. It is not a case of the petitioner that the full and effective opportunity was not afforded to him to cross-examine the witness. Merely because some of the witnesses, whose statements have been recorded subsequent to the examination of Amit, PW1, have not supported the prosecution version, cannot be construed as a circumstance to recall Amit, PW1, for further cross-examination on behalf of the petitioner. The evidentiary value of the statement of Amit PW1 and the witnesses who have not supported the prosecution version is to be looked into, appreciated and evaluated by the learned trial Court at the appropriate stage of the trial. The reason assigned for recall of the witness in the application under Section 311 of the Code is to the effect that the subsequent witnesses have made contradictory statements and in the light of changed circumstances further cross-examination of Amit, PW1, is necessary. It may be mentioned here that the allegations in the application are vague and no justified reason is made out to recall Amit, PW1, for further cross-examination. Full and effective opportunity has already been afforded to the petitioner to cross-examine the aforesaid witness.

7. In these set of circumstances, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.
8. Instant petition is dismissed accordingly.

October 30, 2023
vkd

(Vivek Puri)
Judge

Whether reasoned/speaking: Yes
Whether reportable : Yes