

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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**CRM-M-51367-2023
Date of decision: 10.10.2023**

Manjit Singh

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. P. P. S. Duggal, Advocate for the petitioner

AMAN CHAUDHARY. J.

1. The present petition has been filed for quashing of order dated 20.07.2023 (Annexure P-18) by which the application under Section 311 Cr.P.C. has been allowed in FIR No.14 dated 02.02.2016, registered under Sections 419, 420, 467, 468, 471 and 120-B IPC, at Police Station Daban, District Ludhiana.
2. Learned counsel for the petitioner contends that the trial Court did not justify in allowing the application under Section 311 Cr.P.C. which was filed not at the belated stage but also to fill up lacunae by producing the enquiry reports. The prosecution evidence was already closed by order and the defence evidence was being recorded.
3. Ms. Himani Arora, AAG, Punjab appears on receipt of advance notice and opposes the same by submitting that the impugned order has been rightly passed by the trial Court and also implemented. Thus, she prays for the

dismissal of the present petition.

4. Heard learned counsel on either side.

5. Before proceeding further, it is apposite that the provision of Section 311 CrPC is referred to, which reads thus:

“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.”

6. Bare reading of the aforesaid provision *expressis verbis* reveals that the power under this Section 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 imperative that the Court has to summon and examine all persons whose evidence appears to be essential to the just decision of the case. The said power is not granted with the purpose of filling up the lacunae in the evidence of prosecution or defence, rather to discover the relevant facts or to obtain proper proof of such facts for arriving at a just decision of the case. The sole factor to be contemplated by the Court should be to see that justice is done. It is ultimately with the Court of facts to place reliance on the testimony of witnesses which would be based on the quality of their evidence, the truthfulness in it and confidence that it inspires.

7. The relevant portion of the impugned order dated 20.07.2023 whereby the application filed under Section 311 CrPC by the prosecution, was allowed by the trial Court reads thus:

“7. Having thus considered the contradictory version and

deliberating over the arguments advanced on the application in the light of the submission and circumstances, I am clearly led to the conclusion that the present application deserves to be allowed and one opportunity should be given to the prosecution to place on record the inquiry report in question. This is so because the interest of demands that all the relevant material must be brought before the Court before reaching a final decision in the case. However, the prosecution in the said application has not mentioned the name of the witness from whom the inquiry report is required to be produced. As such, the prosecution is given only one opportunity to produce on record the certificate copy of the said inquiry report on the judicial file on or before 28.07.2023. It is specified that if the report is not produced on the record till 28.07.2023, no further opportunity will be given to the prosecution to produce the said record.”

8. Pertinently the aforesaid order stood implemented as the inquiry reports were ordered to be taken into evidence, as is apparent from the order dated 12.09.2023, relevant portion of which reads thus:

“...He also placed on record the copy of inquiry report dated 09.02.2016 and the statements made therein which were admitted to be correct by the Learned counsel for the accused. As such, the said inquiry report has been taken into evidence as Mark A1 today. The Learned counsel for the accused also did not deny the genuineness of the inquiry reports dated 07.11.2015 and 04.07.2016. Therefore, this Court hereby holds that all the three inquiry reports referred above shall be taken into consideration by this Court at the time of final adjudication of the case.”

9. The petitioner however, had objected to his admission being recorded in the aforesaid order, whereupon the trial Court observed to the effect that since the inquiries were conducted by the police in regular course of procedure, even if no such admission was made, the same will be considered to be a part of the evidence of the prosecution.

10. The object underlying Section 311 Cr.P.C. is that there may not be failure of justice on account of mistake of either party in bringing the valuable

evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”, as was held by Hon'ble The Supreme Court in the case of **V N Patil Vs. Niranjan Kumar**, (2021) 3 SCC 661.

11. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. It is the duty of a Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case as held in **Mohanlal Shamji Soni vs. Union of India & Anr.** AIR 1991 SC 1346, by Hon'ble The Supreme Court.

12. Hon'ble The Supreme Court in **Varsha Garg vs. State of M.P.**, 2022 SCC OnLine SC 986, while considering and allowing the application under Section 311 Cr.P.C. observed that, “...The statutory provision goes to emphasize 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.”

13. Fairness of trial being a virtue that is sacrosanct in the judicial system. There is a duty cast upon the Court to arrive at the truth, one of the means for it being that proper and complete evidence be permitted to be adduced. Even the challenge to the order dated 20.07.2023 is belated as the same stands acted upon, pursuant to which evidence permitted by the trial Court, has been produced.

14. In view of the foregoing, the order passed by the trial Court does not call for any interference, it being neither perverse nor illegal and as such, the petition is dismissed, being devoid of merits.

15. The observations made hereinabove are only for the purpose of adjudication of the present petition and shall not be construed as an expression of opinion on the merits of the case.

16. Pending application(s), if any, shall also stand disposed of accordingly.

10.10.2023
Mehak

(AMAN CHAUDHARY)
JUDGE

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