

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

CRM-M-4369-2023
Date of decision :28.07.2023

Rajesh Jain

.....Petitioner

Versus

Sandeep Mehra

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Petitioner in person

Mr.JS Jaidka, Advocate for the respondent

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure is for setting aside the order dated 17.10.2022 passed by learned Additional Sessions Judge, Jind dismissing the revision petition filed against the order dated 02.02.2021 rendered by learned Judicial Magistrate, 1st Class, Jind whereby application under Section 391 CrPC was dismissed.

2. Petitioner, who is present in person, submits that the learned trial Court has wrongly recorded the fact that he was seeking to produce photocopies instead of certified/attested photocopy of the documents, whereas it is his categoric submission that the cross-examination of accused Sandeep Mehra was a certified document, which also existed in the judicial file at pages 97-122 as averred in the petition in para 5 (c) of the present petition and in so far as the documents at Sr. No. (i), (ii) are concerned, the same were marked as original, seen and returned. The original documents which are in his

possession and the same were shown to the Court and returned to him during the course of hearing of the application. He submits that these documents are essential for the just decision of the case, moreso, in view of the fact that the accused has not stepped into the witness box, had that been done, the petitioner would have put these documents to him in cross-examination. He further submits that insofar as the observation in the trial Court is concerned that as to the reason of not producing these documents earlier, he placed reliance on the judgments of this Court in Civil Revision No. 7388-2010 titled as **Pyare Lal vs. Mehar Singh**, CRM-M-22267-2009 titled as **Balwinder Singh vs. State of Punjab and others**.

3. On the other hand, learned counsel for the respondent submitted that the complainant-petitioner evidence was closed and the application for tendering the alleged documents had been filed at a belated stage only to fill up the lacuna, which has rightly been dismissed by the trial Court and affirmed by the Revisional Court. Thus, he prayed for the dismissal of the present petition.

4. Heard.

5. It is pertinent to mention here that the application for taking on record the alleged documents was filed under Section 391 CrPC, but avoiding the technicalities, the trial Court exercising its power had considered the request of the petitioner and treated it to be under Section 311 CrPC.

6. It would be pertinent to refer to Section 311 CrPC., 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 or 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. Hon'ble The Supreme Court in the case of **Rajendra Prasad vs. Narcotic Cell**, (1999) 6 SCC 110, on consideration of the matter drew a distinction between lacuna and error on the part of the prosecution and had held thus:-

“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 165 of the Evidence Act by saying that the court could not 'fill the lacuna in the prosecution case'. A lacuna in 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 error is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistake during the conduct of a case cannot be understood as the 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.

9. The very same decision Mohan Shamji Soni Versus Union of India (supra) which cautioned against filling up lacuna has also laid down the ratio thus : “It is therefore clear that the Criminal Court has ample power to summon any person as a witness or recall and reexamine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and good sense appear to be the only safe guides and that only requirements of justice command this examination of any person which would depend on the facts and circumstances of each case.”

8. On the basis of the law laid down in the aforesaid judgment, this

Court in the case of **Balwinder Singh** (supra), observed that, “it can be stated that in a given case, if proper evidence is not adduced or relevant material has not been brought on record, due to inadvertence or oversight, the Court should permit such mistakes to be rectified, which would include an oversight in the management of the prosecution. This mistake or inadvertent omission on the part of the prosecution cannot be treated as punishable lacuna, which cannot be cured by the Court, while exercising its power under Section 311 CrPC and no party in the trial can be fore-closed from correcting errors aforementioned, which have crept in unintentionally and by oversight.”

9. The object underlying Section 311 of the Code 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 section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the section merely because the evidence supports the case of the prosecution and not that of the accused. It is a general section which applies to all proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

10. It is a cardinal rule in the law of evidence that the best available

evidence should be brought before the Court.

11. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth. It is not only the prerogative but also the plain duty cast upon the Court to produce such documents to do justice. The power conferred under Section 311 should be invoked by the Court for strong and valid reasons after taking into consideration the facts and circumstances of each case, which are found to be existing in the present case having regard to the importance of necessary documents being tendered into the evidence, even the Magistrate, on his own motion or on the motion of the complainant, could have exercised such powers, which provides for wholesome power to the Court to secure the ends of justice and allow the said application for producing the said documents so as to arrive at a just decision of the case.

12. In the case of **Varsha Garg vs. State of Madhya Pradesh and others**, 2022 SCC OnLine SC 986 , Hon'ble The Supreme Court had 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."

13. Fairness of trial being a virtue that is sacrosanct in the judicial system, the dismissal of the application of the petitioner amounts to denial of a fair opportunity to the complainant to project his case.

14. Considering the peculiarity of the facts in light of the law as explicated in the afore-referred judgments, the present petition is allowed. The impugned orders dated 17.10.2022 and 02.02.2021 are set aside. The trial

Court is directed to grant one effective opportunity to the petitioner to tender the requisite documents in his evidence.

15. Disposed of.

28.07.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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