

134

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-56464-2023

Date of decision: 08.11.2023

Sukhjinder Singh @ Sukhwinder Singh

....Petitioner

Versus

The State of Punjab and others

....Respondents

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. Abhishek Khullar, Advocate,
for the petitioner.

Mr. Subhash Godara, Addl. AG, Punjab.

.....

SANJIV BERRY, J.

1. Instant petition has been filed under Section 482 Cr. P.C. for quashing of the impugned order dated 04.10.2023 (Annexure P-6), passed by learned Special Judge, Gurdaspur, in Sessions Case No. 45/20.09.2017, titled as ‘*State vs. Harinder Singh and another*’, whereby an application filed under Section 311 Cr.P.C for recalling the witness PW-1, namely Sukhjinder Singh for re-examination, was dismissed. The petitioner is further seeking stay of the proceedings before the learned Trial Court in the aforementioned case, pending trial in case FIR (Annexure P-2) Details of the FIR are as under: -

FIR No.	Dated	Sections	Police Station
72	26.07.2015	302, 148, 149 IPC	P.S. Ghuman, District Gurdaspur

2. Brief facts of the case are that the aforesaid FIR was registered, on the statement of one Baljinder Singh who accompanied by his brother Sukhjinder Singh and son of Sukhjinder Singh, namely Manpreet Singh, were going to Dhandoi Bus Stop for buying some domestic articles. Then four persons came on car and another two on a motorcycle which included accused Harinder Singh @ Raja, Maninder Singh and Kewal Singh @ Raju besides three other persons whom he can identify. On lalkara being raised by Maninder Singh, Manpreet Singh was held from his arm & back and Harinder Singh alias Raja with an intent to kill him gave three Kirch blows on the chest and back of Manpreet Singh, as a result he fell down on the ground. On the alarm being raised by the complainant they ran away from the spot along with their weapons. The injured was shifted to hospital where he succumbed to the injuries. After completion of the investigation, challan was presented in Court where it is pending trial. During the course of trial the petitioner had moved an application under Section 311 Cr.P.C which was dismissed vide the impugned order dated 04.10.2023 (Annexure P-6) and aggrieved by the same, the present petition has been preferred.

3. It is *inter alia* contended by learned counsel for the petitioner that the learned trial Court has wrongly dismissed the application which was moved for purpose of rectifying the typographical error which had occurred during the statement of PW1 Sukhjinder Singh wherein due to inadvertence it has been recorded that he named 'Kewal Singh' as a person who inflicted Kirch blows instead of 'Harwinder Singh'. He submits that the purpose of moving the instant application was to rectify the typographical error rather

than filling up of lacuna as has been observed by the learned trial Court, as such he prayed for acceptance of the petition.

4. Considering the submissions made by learned counsel for the petitioner and perusing the documents referred to, wherein it is not disputed that during the course of trial the prosecution had examined present petitioner Sukhjinder Singh as PW1 who happens to be father of deceased, in the witness box. His examination-in-chief was recorded on 03.07.2019 and thereafter he was cross-examined by learned defence counsel on 28.08.2019. As per the learned counsel for the petitioner in the statement of PW-1 Sukhjinder Singh recorded on 03.07.2019 there was a typographical error regarding mentioning of name of 'Kewal Singh' instead of 'Harwinder Singh' as the accused who had inflicted Kirch blows on the person of his son Manpreet Singh. He submitted that the case of the prosecution throughout has been that Kirch blows have been attributed to Harwinder Singh and therefore mentioning of the name of Kewal Singh in the statement of Sukhjinder Singh, father of the deceased, was as a result of typographical error and it deserves to be rectified on his application under Section 311 Cr.P.C.

5. Before proceeding further, a glance at Provision contained under Section 311 Cr.P.C. is important which reads as under:-

“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. Admittedly, besides being represented by Additional Public Prosecutor for the State, the petitioner had also engaged his own counsel to represent him i.e. the complainant, during the trial. It is admitted by learned counsel for the petitioner that the statement dated 03.07.2019 had been recorded in the presence of Additional Public Prosecutor as well as counsel representing the complainant. The instant application had been moved after about 4 years of such statement, having been made by PW-1 Sukhjinder Singh (petitioner) on 03.07.2019. Although learned counsel for the petitioner has claimed the instant application under Section 311 Cr.P.C for the purpose of rectifying the typographical mistake to be under ambit of the provision, but I find no merit in these contentions.

7. No doubt the application under Section 311 Cr.P.C can be moved at any stage before the pronouncement of final judgment but for that sufficient grounds have to be there for recalling the witnesses. On the face of it, the instant petition appears to have been filed after a gap of four years from the recording of the statement of petitioner Sukhjinder Singh on 03.07.2019 with a motive to “shift the onus and to fill the lacuna in the case of prosecution” which is not permissible within the ambit of Section 311 Cr.P.C. The instant application under Section 311 Cr.P.C has been moved to rectify the version of PW-1 Sukhjinder Singh by changing the name of the assailant who had inflicted Kirch blows which in no manner falls within the ambit of typographical error as has been alleged by learned counsel for the

petitioner. It is worth mention here that when the statement of Sukhjinder Singh was recorded on 03.07.2019 and 28.08.2019 in the presence of learned Additional Public Prosecutor for the State as well as private counsel engaged by him, then if any error occurred at the time of his examination, the same should have been immediately brought to the notice of Court. After lapse of four years therefrom, the petitioner has certainly no case in his favour for the instant application under Section 311 Cr.P.C, to be allowed on such like flimsy ground. The learned trial Court has judiciously and exhaustively considered the submissions of the petitioner while dismissing the application under Section 311 Cr.P.C, vide the impugned order dated 04.10.2023 (Annexure P-6) and I find no illegality or infirmity therein so as to call for any interference therein. As a consequent, finding no merit in the instant petition, the same is hereby dismissed in limine.

8. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

08.11.2023
Gyan

(SANJIV BERRY)
JUDGE

- | | | |
|-----|----------------------------|--------|
| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |