

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

124

CRM-M-58862-2023 (O&M)

Date of decision: 29.11.2023

Jarmanjeet Singh @ Jarman Singh @ Pattu**...Petitioner****Versus****State of Punjab****...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. D. S. Nigha, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 482 Cr.P.C., is for quashing of order dated 09.11.2023, passed by the Chief Judicial Magistrate, Tarn Taran in case No. CHI-39 of 2021, titled as ***State vs. Jarman Singh @ Pattu***, vide which, the application filed by the petitioner under Section 311 Cr.P.C., for recalling PW-2 Paramjit Kaur and PW-3 Dharam Singh for their cross-examination, has been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of the present case are that the petitioner is facing trial in FIR No. 99 dated 18.06.2017, registered under Section 354 IPC at Police Station Sadar, Tarn Taran, which was registered at the instance of complainant Paramjit Kaur. Since PW-2/complainant Paramjit Kaur and PW-3 Dharam Singh were not appearing before the Court, they were summoned through bailable warrants in the sum of Rs. 10,000/- each with one surety in the like amount for 05.05.2022. On 05.05.2022, the statements of PW-2 Paramjit Kaur and

PW-3 Dharam Singh were recorded by the learned trial Court but their cross examination could not be conducted on the said date and it was recorded that “*opportunity given nil*”, as counsel for the accused was in some personal difficulty and his presence was marked inadvertently in the order. Thereafter, the petitioner filed an application filed under Section 311 Cr.P.C. for recalling PW-2 Paramjit Kaur and PW-3 Dharam Singh. However, the said application was dismissed by the trial Court on 09.11.2023 by passing the following order:

“PW8 Joga Singh present and examined. Learned Additional Public Prosecutor closed evidence. I have heard on the application filed by the accused Under section 311 Cr.PC for recalling the witness PW2 Paramjit Kaur and PW3 Dharam Singh for their cross-examination. It is submitted that Paramjit Kaur and Dharam Singh were examined on 05.05.2022 but they were not cross-examined as counsel for accused was not available at that time so opportunity was given nil. It is submitted that their cross-examination is necessary. I peruse the file as PW2 and PW3 were examined on 05.05.2022 and full opportunity was given to the Learned counsel for accused to cross-examine them but he did not crossexamine them intentionally on dated 05.05.2022. Since full opportunity was granted. There is no ground to allow the application. So application Under section 311 Cr.PC is dismissed. Now, adjourned to 21.11.2023 for recording statement of accused Under section 313 Cr.P.C.”

3. Learned counsel for the petitioner/accused has argued that the learned trial Court has erred in dismissing the application filed by the petitioner under Section 311 Cr.P.C. as cross-examination of the aforesaid

two prosecution witnesses is very much essential for the proper adjudication of the case. It is further argued that on 05.05.2022, the cross-examination of the aforesaid two prosecution witnesses could not be conducted as counsel for the petitioner could not appear before the trial Court on account of some personal difficulty.

4. I have heard learned counsel for the petitioner and have also gone through the material placed on record very carefully.

5. A perusal of the record reveals that the FIR pertains to the year 2017, in which, the petitioner is facing trial as an accused. However, the trial could not progress as aforesaid two witnesses were not appearing before the trial Court and ultimately, the trial Court procured their presence through bailable warrants for 05.05.2022 and their examination-in-chief was recorded but their cross-examination could not be conducted. It has been argued by learned counsel for the petitioner that due to non-availability of counsel for the petitioner on 05.05.2022, the cross-examination of aforesaid witnesses could not be conducted. The petitioner/accused, thereafter, filed an application under Section 311 Cr.P.C. seeking to recall the aforesaid witnesses, however, the said application has been dismissed by the trial Court by passing the impugned order dated 09.11.2023. A perusal of the application, filed by the petitioner under Section 311 Cr.P.C. shows that in paragraph No. 4, it is specifically mentioned that on 05.05.2022, the counsel for the accused had gone out of station.

6. The concept of cross-examination is the most essential ingredient of fair trial. In the absence thereof, the examination of the witness, cannot be said to be complete and thus cannot be relied upon. It is

well settled that the rights of the accused to prove his innocence are valuable and cannot be defeated. The denial whereof can gravely prejudice his defence. In this regard, it even becomes the bounden duty of the Court to ensure that both the examination and cross-examination should be conducted and in case required, for the aforesaid purpose, if the Court is of the view that somehow may be due to inadvertence or otherwise, it could not be conducted, it can even *suo moto* summon such witness, in the interest of justice. In the absence of the evidence having been properly recorded, the same cannot even be scrutinized, so as to arrive at any conclusion in favour or against the accused. Hon'ble Supreme Court in ***Rafiq and another v. Munshilal and another'*** reported as AIR 1981 SC 1400 has held that the application under Section 311 Cr.P.C. should not be dismissed merely on the ground of default of the counsel for the accused and the accused should not suffer for the fault of the counsel. The power, under Section 311 of the Code, can be exercised by the court ***at any stage of any inquiry, trial or other proceedings under the Code***, to summon any person as witness, examine any person in attendance, though not summoned as a witness or recall or re-examine any person already examined. The intention of the Legislature is to empower and enable the court to come to a correct finding and for that reason, the court would be fully justified in permitting production of evidence, whether documentary or oral, where the court feels that the same is necessary for the just decision of the case. No fetters can be put in exercise of these powers of the court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the court by the Legislature to exercise the powers under Section 311 Cr.P.C.

7. In ***Zahira Habibulla H. Sheikh and anr. v. State of Gujarat and ors 2004 (2) RCR (Crl.) 836***, the Supreme Court described the scope of Section 311 of the Code as under:-

“Object of the Section is to enable the court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.”

8. In ***Mannan Sk. and others Versus State of West Bengal and another 2014 (13) SCC 59***, Hon'ble Apex Court had allowed the application filed under Section 311 Cr.P.C. and the witness was recalled and re-examined after 22 years of incident, holding that justice must not be allowed to suffer because of the oversight of the prosecution.

9. In view of the above discussion and also in view of the ratio of law laid down by Hon'ble Supreme Court in aforesaid judgments, this Court is of the considered opinion that cross-examination of the aforesaid two witnesses, i.e. PW-2 Paramjit Kaur and PW-3 Dharam Singh, is essential for the just and proper disposal of the case and the petitioner/accused must be given an opportunity to cross-examine the aforesaid witnesses in order to lead his defence evidence.

10. Accordingly, the present petition is allowed and the impugned order is hereby set aside. The trial Court is directed to accord two effective

opportunities to the petitioner to cross-examine the aforesaid witnesses. The effective opportunity would mean when the aforesaid witnesses are present in Court for their cross-examination. The trial Court shall fix a date for the said purpose within a month from the date of receiving a copy of this order.

11. However, this will be subject to payment of costs of Rs. 5,000/- to be deposited by the petitioner with the District Legal Services Authority, concerned.

29.11.2023

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes