

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

CRM-M No.64402 of 2018
Date of decision: 20th July, 2023

Shilak Ram Hooda

... Petitioner

Versus

State of Haryana & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Petitioner in person.

Ms. Jasleen Chahal, Asst. Advocate General, Haryana
for respondent No.1/State.

Mr. A.S. Brar, Advocate for respondents No.2 and 3.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking quashing of order dated 14.12.2018 (Annexure P-7) passed by learned Additional Sessions Judge, Panchkula, whereby order dated 30.08.2018 (Annexure P-6) passed by learned trial Court, Panchkula in case FIR No.73 dated 17.02.2013 under Sections 457, 380, 411 IPC registered at Police Station Sector 5, Panchkula was upheld.

2. The petitioner, who is appearing in person, inter alia contends, that on the intervening night of 16th and 17th February, 2013 while he and his family were out of station, he was informed by one of his neighbours, that a theft had taken place in his house. On return, he found that thieves had decamped with gold ornaments and ₹ 4.00 lacs, which were lying in his house. On an application moved by the

petitioner, the FIR in question came to be registered and subsequently, some of the accused, on being arrested, were put to trial. After closure of prosecution evidence, it came to his notice that DW-1 ASI Barkha Ram, had intentionally withheld certain facts qua the stolen articles and ornaments deposited in the malkhana and subsequently taken on sapurdari by the petitioner, including certain crucial entries in the malkhana register No.19 pertaining to the stolen articles. It has been contended by the petitioner that it was only when he was preparing the case for arguments, he realized that a fraud had been committed upon him by the defence, hence, he thereafter moved an application under Section 6 of the RTI to bring on record the true facts qua the entries in malkhana register no.19 of Police Station, Sector 5 Panchkula, from which it became even more evident that the defence had been trying to help the accused during trial.

3. The petitioner has thus, urged that in the above facts and circumstances, the documents sought to be placed on record, would be of utmost importance and crucial to his case, which fact was not appreciated by both the Courts below while passing the impugned orders.

4. Per contra, learned State counsel assisted by learned counsel for the respondent/accused, have opposed the prayer made by the petitioner. It has been argued that the petitioner by way of an application under Section 311 Cr.P.C. was only indulging in dilatory tactics and trying to fill up the lacuna in the prosecution case. It was

vehemently contended that DW-1 ASI Barkha Ram was subjected to an extensive cross-examination by both the petitioner and the learned public prosecutor. All the documents including the relevant entries, which the petitioner is now trying to bring on record through his application under Section 311 Cr.P.C., were duly produced during trial. It has been further submitted that the petitioner, who was duly represented by a counsel, was given and had ample opportunity to cross-examine the witnesses on all material aspects of the case, however, he had not raised any suspicion, much less by way of a whisper, with respect to any ambiguity in the entries in the malkhana register. It has been further argued that all the original records were produced during trial, and there is nothing which stopped the petitioner from perusing them and cross-examining the witness qua all those entries which he was now wanting to do, and that too at the fag end of the trial.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Undoubtedly, the object behind the provisions of Section 311 Cr.P.C. is to meet the ends of justice, however, the discretion of the Court to invoke Section 311 Cr.P.C. must be exercised with a great deal of prudence after taking into consideration the facts and circumstances of each case. In the instant case, it has not been disputed by the petitioner that DW-1 ASI Barkha Ram, who is sought to be recalled for his re-examination for establishing the genuineness of certain entries in

the Malkhana register No.19 of Police Station Sector 5, Panchkula, had not only been subjected to a lengthy cross-examination but all the original records of Malkhana register No.19 were duly produced during trial.

7. It is thus, obvious that all the relevant documents were already available and within the knowledge of the petitioner, when DW-1 ASI Barkha Ram was cross-examined earlier. Hence, the plea of *'inadvertence and oversight'* raised by the petitioner, who is a practicing lawyer too in Para No.1 of the petition as well as during his arguments in the Court today, cannot be accepted.

8. The FIR in question was registered in the year 2013 and the trial has been pending ever since then. The maxim *'vigilantibus non dormientibus aequitas subvenit'*, i.e. the law assists those who are vigilant with their rights and not those that sleep thereupon, is very much applicable to the case in hand. The petitioner was granted ample opportunities to effectively cross-examine DW-1 ASI Barkha Ram, however, as per his own admitted case, he had failed to do so on account of inadvertence. The provisions of Section 311 Cr.P.C. cannot be invoked to help either the prosecution or the defence by plugging holes in their evidence. The accused cannot be denied his right to speedy trial by subjecting him to face trial for an indefinite period of time for no fault of his.

9. As a sequel to the above, this Court does not find any merit in the instant petition, which would warrant setting aside the impugned orders. The petition, as such, stands dismissed.

10. However, it is made clear that anything observed herein above shall not be construed to be an expression of opinion on merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

July 20, 2023
rps

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