126 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-64055 of 2023
Date of Decision: 20.12.2023

HARBHAJAN SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND ANOTHER.

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akshay Chadha, Advocate
for the petitioner.

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Harpreet Singh Brar, J. (Oral)

1. The petitioner has approached this Court by filing present petition under Section 482 of the Code of Criminal Procedure seeking quashing of impugned order dated 17.11.2023 (Annexure P-7) passed by Ld. Judicial Magistrate Ist Class, Ludhiana by which the application u/s 311 of Cr.P.C, filed by the petitioner for recalling the respondent no.2/complainant i.e., PW Rajwinder Singh, for the purpose of further cross-examination has been dismissed.

2. The facts, in brief, are that respondent no.2/complainant was travelling towards village Jodhan on a motorcycle of make Discover bearing no. PB-10DA-4803 along with his friend when a white colour swift car bearing no. PB-10-CU-5325 came from the front at high speed and banged into the motorcycle. Due to the impact, the said friend of respondent no.2 who was sitting behind him, fell on the road and sustained injuries. Respondent no. 2 himself suffered a lot of injuries. The said injured persons were taken to a hospital where, eventually, the friend of respondent no.2 died while he remained under treatment for the injuries that he sustained. Due to this negligent act of the petitioner an FIR No. 36 dated 31.01.2018 under Sections 304-A, 279 and 427 of

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IPC was registered against him, subsequent to which criminal proceedings have ensued against the petitioner. Charges were framed against the petitioner on 14.09.2018. Thereafter, respondent no.2 submitted his examination in chief, partly on 19.04.2019 and the rest on 15.07.2019. On the next date of trial, i.e., 16.07.2019, respondent no.2 was cross-examined by the counsel of the petitioner. Then, in the year 2023, the petitioner moved an application under Section 311 of Cr.P.C for recalling respondent no. 2 for his further re-examination. The said application has been dismissed by the Ld. JMIC, Ludhiana vide order dated 17.11.2023.

3. Learned counsel for the petitioner contends that the impugned order is perverse and legally unsustainable since sufficient opportunity for cross-examination has not been granted to the petitioner. Since, only one opportunity was granted, certain pertinent questions were left out. He further contended that the said application was dismissed because it did not mention the reasons qua the need for further cross-examination in the concerned application but mentioning them would have disclosed petitioner's defence beforehand to the respondent no.2, leaving him to a disadvantage.

4. Learned counsel for the petitioner inter alia contends that only 2 prosecution witnesses out of 9 have been examined and the case is still at a nascent stage. Reliance has been placed upon the judgements of Hon'ble Supreme Court in the case of **Rajendra Prasad v. The Narcotic Cell through its Officer-in-Charge Delhi, 1999 (6) SCC 110** and **Mohanlal Shamji Soni v. Union of India (supra)** and **Jamatraj Kewalji Govani v. The State of Maharashtra, (1967) 3 SCR 415.** Learned counsel for the petitioner insists that the re-examination of respondent no.2 is necessary to prove the stand of the petitioner before the learned trial Court.

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5. Having heard the learned counsel for the petitioner and after perusing the record with his able assistance, this Court finds no ground to interfere with the impugned order dated 17.11.2023 passed by the learned trial court.

6. The power under Section 311 Cr.P.C can be exercised for summoning a witness at any stage of any inquiry, trial or other proceeding under this Code and the Court may 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. The Court can summon and examine or recall and re-examine any such person if his evidence appears to be essential for the just adjudication of the case. The Court is required to form an opinion whether such evidence is necessary for a just and proper decision in that case. Although, in the present case, a perusal of the record indicates that sufficient opportunity was granted to the petitioner to cross-examine the witness and availing that opportunity, respondent no.2 - Rajwinder Singh was cross-examined at length on 16.07.2019. Further, the said application under Section 311 Cr.P.C was moved after a gap of more than four years.

7. The learned trial court has correctly concluded that there is no justification for the need to grant further opportunity to the petitioner to cross-examine respondent no.2/complainant Rajwinder Singh (PW1) and the said application was moved just to delay the proceedings. Moreover, the necessary ingredient under S. 311 as to whether recalling and re-examining respondent no.2 is essential to the just adjudication of the said case was not demonstrated.

8. A two judge Bench of the Hon'ble Supreme Court in **VN Patil vs. K. Niranjan in Criminal Appeal No. 267 of 2021** decided on 04.03.2021 examined the scope of the power under Section 311 Cr.P.C and following was

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observed: -

> *"Object underlying Section 311Cr.P.C is that there may not be failure of justice on account of mistake of either party in bringing 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 enquiry or trial or other proceeding under this Code'. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion."*

9. The Division Bench of this Court in **Sukhdev Singh vs. State of Punjab, 1982 Cr. LJ 2201** has held that: -

> *"The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this Section cannot be limited only to something arising eximporviso which no human agency could see. The mere fact that evidence is permitted to*

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be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added)."

10. Keeping in view the above discussion, this Court finds that the learned trial Court has correctly adverted to the factual matrix in the light of the provision of Section 311 of Cr.P.C and came to the right conclusion in dismissing the said application. The necessary ingredients for invoking the power under Section 311 of Cr.P.C are completely missing. Hence, this Court finds no merit in the present petition and, as such, the same is dismissed.

(HARPREET SINGH BRAR)
JUDGE

20.12.2023
Ajay Goswami

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

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