

CRM-M-1489-2019
(261)

::1::

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1489-2019 (O& M)
Date of Decision:12.03.2024

Kulwant Kaur

... Petitioner

Versus

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Parminder Singh Kanwar, Advocate for the petitioner.

Mr. Mohit Saroha, AAG, Punjab.

Mr. Dolli Sharma, Advocate, Amicus Curiae
for respondents No.2 to 4.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of order dated 08.01.2019 (Annexure P-4) vide which the application under Section 311 Cr.P.C. for summoning the witnesses by way of additional evidence stands dismissed by the Court of Chief Judicial Magistrate, Tarn Taran, District Tarn Taran.

2. The brief facts of the case are that an FIR No. 79 dated 28.03.2014 under Sections 379/411/34 IPC, Police Station City Tarn Taran, District Tarn Taran, came to be registered against respondents No.2 to 4 with the allegations that they had snatched the purse of the complainant containing her car keys, Rs.9000/- (cash) and a passport. The car keys were further used to steal her car. A copy of the FIR is attached as Annexure P-1 to the petition.

CRM-M-1489-2019
(261)

::2::

3. The report under Section 173 (2) Cr.P.C. was submitted on 25.05.2015 against respondents No.2 to 4 and the said report cited 11 prosecution witnesses including the complainant and others. Charges were framed on 25.08.2015 and the prosecution began to lead its evidence. However, the prosecution agency failed to examine HC Satnam Singh who had been cited as a witness and the evidence was closed by the order of the Court. Thereafter, the statements of the accused were recorded under Section 313 Cr.P.C. and the case was adjourned for the defence evidence. It was at that stage that an application under Section 311 Cr.P.C. (Annexure P-2) had been moved.

4. The application under Section 311 Cr.P.C. sought to summon four witnesses, namely, Manpreet Singh, the original owner of the car, the concerned Clerk of DTO Office, Tarn Taran alongwith complete file of the transfer of the car, the MHC, Police Station Tarn Taran with regard to the original record regarding DDR No.32 dated 21.11.2013 alongwith the concerned Clerk from the Record Room with the original file of the application under Section 156(3) Cr.P.C.

5. The accused-respondents No.2 to 4 filed their reply (Annexure P-3) to the application under Section 311 Cr.P.C.

6. The Court dismissed the application under Section 311 Cr.P.C. (Annexure P-2) vide impugned order dated 08.01.2019 holding that the application had been filed without elaborating the reasons for delay in filing the same and the relevance of the witnesses sought to be summoned had not been enumerated. A copy of the aforesaid order is attached as Annexure P-4.

CRM-M-1489-2019
(261)

::3::

7. The aforementioned order (Annexure P-4) is under challenge in the present petition.

8. The learned counsel for the petitioner contends that a perusal of the application (Annexure P-2) would reveal the reasons for which the various witnesses were required to be summoned. HC Satnam Singh was cited as a witness in the challan and as he had not appeared, coercive steps ought to have been adopted to secure his presence and consequential examination. Manpreet Singh was required to be examined as he was the original owner of the car. The Clerk of the DTO Office, Tarn Taran was required to be examined as he was to bring on record the complete file of the transfer of the said car in the name of the petitioner-complainant. The Clerk from the Record Room of the Court at Tarn Taran was required to be examined so as to bring on record the original application under Section 156(3) Cr.P.C. which contained the original photographs and other relevant material. As the evidence sought to be brought on record was essential for the just adjudication of the case, the application (Annexure P-2) ought to have been allowed. He, therefore, contends that the impugned order (Annexure P-4) was liable to be quashed and an opportunity ought to be granted to the petitioner-complainant to lead evidence in terms of the application under Section 311 Cr.P.C.

9. The learned counsel for the State and the Amicus Curiae for the respondents No.2 to 4, on the other hand, contend that the prosecution evidence had been closed as the witnesses had not appeared despite numerous opportunities. It was at the stage of final arguments when the instant

CRM-M-1489-2019
(261)

::4::

application had been moved. Apparently, the same had been filed with an intention to delay the matter. The petitioner was unable to explain as to how the witness sought to be examined were material for the just adjudication of the case. They, therefore, contend that the impugned order (Annexure P-4) had rightly been passed and the present petition was liable to be dismissed.

10. I have heard the learned counsel for the parties.

11. Before proceeding further, it would be relevant to examine Section 311 Cr.P.C., 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.”

12. The Hon’ble Supreme Court in **‘Rajaram Parsad Yadav versus State of Bihar and another, 2013(3) RCR (Criminal) 726** has held as under:-

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

- b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.*
- c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.*
- d) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.*
- e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.*
- f) The wide discretionary power should be exercised judiciously and not arbitrarily.*
- g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.*
- h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.*
- i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.*
- j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from*

correcting errors and that 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.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

13. Coming back to the facts of the instant case, a perusal of the application under Section 311 Cr.P.C. (Annexure P-2) would show that the petitioner-complainant has described in detail the witnesses which are required to be summoned and examined and the purpose of their deposition.

CRM-M-1489-2019
(261)

::7::

The Trial Court has erroneously come to the finding that nothing had been mentioned in the application as to how those witnesses were material for the just adjudication of the case. A perusal of Section 311 Cr.P.C. itself would show that if the evidence of any witness appears to be essential for the just adjudication of the case, the Court must summon that witness.

14. In the instant case, as has already been mentioned, all the witnesses sought to be summoned are relevant to prove the case of the prosecution, though of course, the evidentiary value of the statements would be appreciated during the course of the Trial.

15. In view of the above, I find considerable merit in the present petition and therefore, the order dated 08.01.2019 (Annexure P-4) stands quashed. The prosecution is granted an opportunity to examine the witnesses mentioned in the application under Section 311 Cr.P.C. (Annexure P-2) and pursuant thereto the Trial be concluded within a period of three months.

16. The present petition stands disposed of.

(JASJIT SINGH BEDI)
JUDGE

March 12, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No