

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No. 183-2022 (O&M)
Reserved on : 16.04.2024
Pronounced on : 19.04.2024

SUKHCHAIN SINGH

... Petitioner

Versus

MRIDULA BHARDWAJ AND ANOTHER

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. P.B.S. Goraya, Advocate
for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

Mr. Vaibhav Sharma, Advocate for respondent No.1.

SANJIV BERRY, J.

By way of the present revision petition, petitioner has challenged the order dated 14.12.2021 passed by learned Additional Sessions Judge, Tarn Taran in case No. SC/42/2017 titled as '*Sukhchain Singh Vs. Mridula Bhardwaj*' in FIR No.323, dated 26.11.2015, under Sections 306 IPC, PS, Patti, District Tarn Taran whereby application under Section 311 Cr.P.C filed by the petitioner seeking permission to summon ASI Satpal Singh, the then Incharge of Police Post Sadar, Patti, was dismissed without appreciation of material evidence on record and hence the

present petition.

2. Brief facts of the case are that petitioner filed a complaint under Section 306 IPC stating that he is having two children and his son Gauravdeep Singh was studying in 10+2 standard in Shaheed Bhagat Singh Senior Secondary School Patti, District Tarn Taran. On 20.11.2015 at about 11:30 am Kashmir Singh has informed the petitioner on telephone that he had seen Gauravdeep Singh in a deteriorated condition in market and on asking he told him that he consumed poison, immediately he took Gauravdeep Singh and admitted him to Civil Hospital, Patti. The petitioner/complainant reached the hospital and asked Gauravdeep Singh about cause of consuming poison and he told that in the morning, when he reached the school, Principal Madam Mridula Bhardwaj gave slaps on his face and insulted him by using abusive language and due to insult committed by Principal upon him and his parents, he had taken some poisonous substance. Due to lack of facilities in the Civil Hospital Patti petitioner has shifted his son to Baba Bidhi Chand Chhina, Multi-specialty Hospital at Chuslwar Mourh, Patti and he remained under treatment since 20.11.2015 to 25.11.2015, and shifted his son on 25.11.2015 to Holy Heart Hospital, Jalandhar Road, Amritsar, where he died on 25.11.2015. The matter was reported to the police and FIR was registered but failing to take action against the school principal, petitioner has filed the complaint dated 04.01.2016 (Annexure P-2) and vide order dated 14.07.2016 (Annexure P-3) passed by learned Sub-Divisional Judicial Magistrate, Patti, respondent was ordered to be summoned. During course of trial petitioner has filed application under Section 311 Cr.P.C. seeking permission to summon ASI

Satpal Singh, the then Incharge of Police Post Sadar, Patti, but the same was dismissed by learned Additional Sessions Judge Tarn Taran vide order impugned dated 14.12.2021, feeling aggrieved petitioner has filed the revision petition.

3. It is *inter alia* contended by learned counsel for the petitioner that that ASI Satpal Singh is the person who conducted investigation of the FIR and his deposition can bring crucial facts on record as such petitioner filed application under Section 311 Cr.P.C for summoning of ASI Satpal Singh, the then Incharge of Police Post Sadar, Patti and vide order dated 14.12.2021 passed by learned Additional Sessions Judge, Tarn Taran dismissed the same without appreciating the facts in an unjustified and unreasonable manner, as such the same is liable to be set aside. In support of his contentions he has referred to judgment passed by this Court in ***Jogender Singh Vs. State of Haryana (P&H) 2019(1) R.C.R. (Criminal) 642;*** and prays for acceptance of the petition.

4. Per contra learned State counsel assisted by the learned counsel for respondent No.1 has argued that there is no merit in the present petition as the learned trial court has rightly appreciated and considered the facts and circumstances of the case. They argued that the proposed summoning of the witness is nothing but aimed at filling up the lacuna in evidence which cannot be allowed to be done. They contended that after the investigation was conducted in the FIR registered at the instance of the petitioner, the police had recommended the cancellation and submitted the cancellation report dated 01.05.2017 in court. The petitioner had not agreed to the cancellation report and filed protest petition which has been taken

cognizance of and tried as the instant case. They contend that the petitioner was aware of this cancellation report and also aware that the FIR was registered by ASI Satpal Singh but he never cited him as witness in the complaint. Moreover, once the cancellation report had been submitted in the Court any part of investigation done by ASI Satpal Singh is already part thereof. They contended that the petitioner had earlier also filed another application under Section 311 Cr.P.C dated 23.03.2018 which was allowed on 15.03.2019 but he had not mentioned therein about the necessity of calling ASI Satpal Singh as witness and has now filed the instant application after the trial Court had granted him the last and final opportunity for adducing prosecution evidence, with an intent to delay the proceedings, hence, they prayed for dismissal of the revision petition.

5. Heard.

6. Before proceeding further, a glance at the provisions 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.”

7. It is, apt to mention here that there is no dispute so far as the powers conferred under Section 311 Cr.P.C upon the trial Court is concerned. However, the same has to be used with the rider that it can be used only when it appears to the Court that it is essential for just decision of the case .

8. In this regard, the Hon'ble Apex Court has laid down certain principles to be borne in mind while dealing with application under Section 311 Cr.P.C in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal)726***, and it has been laid down therein that the Court can summon a person to appear as witness under the Section, if it is deemed essential for the just decision of the case and the power under Section 311 Cr.P.C should be resorted to by the Court only with the object of finding out truth and should be exercised judiciously. It is further held therein that the exigency of the situation, fair play and good sense should be the safeguard while exercising such discretionary power under this Section.

9. Further, it has been held by Hon'ble Apex Court in ***AG vs. Shiv Kumar Yadav and Anr. 2015(4) RCR (Criminal) 312 (SC)***, that this power under Section 311 Cr.P.C 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 decision of the case.

10. Thus, it is settled preposition that the discretionary power under Section 311 Cr.P.C is to be exercised by learned trial Court only if the evidence of witness appears to the Court is essential for the just decision of the case. The paramount requirement while exercising this power is the “just decision” and for that purpose the essentiality of a person to be recall or re-examine has to be ascertained judiciously and with extreme care and caution.

11. After perusing the record and considering the respective submissions, it is not disputed that initially the petitioner had lodged an FIR regarding the occurrence, which was investigated into and the cancellation

report was submitted in Court and on the same day the complainant had put in appearance in the Court and showed his dissatisfaction with the report presented by the Investigating Agency and had filed the instant complaint which is pending trial. Admittedly, the complainant has not cited ASI Satpal Singh as witness, although he was aware about him having conducted the investigation initially. Admittedly, upon completion of investigation, the cancellation report had been submitted by the police. It is also not disputed that during course of trial, the charge was framed on 07.04.2017 and thereafter the petitioner had moved an application under Section 311 Cr.P.C. on 23.03.2018 which after considering requirement, had been allowed by the learned trial Court vide order dated 15.03.2019. The petitioner had nowhere, mentioned the requirement for summoning of ASI Satpal Singh in that application, although he was aware of investigation initially conducted by this official. Now, the instant application has been preferred by the petitioner once the learned trial Court has granted last and final opportunity to petitioner to conclude the evidence in the complaint case. The petitioner has not uttered even a single word regarding this official ASI Satpal Singh could not be cited despite due diligence on his part nor even he had mentioned the same while exercising his earlier option under Section 311 Cr.P.C on 23.03.2018. The learned trial Court, therefore, rightly concluded while dismissing the application that the instant application had been preferred by the petitioner just to prolong the litigation and to fill lacuna. No doubt any Court may at any stage of trial summon any one as witness but it has been categorically laid down in the provisions contained in Section 311 Cr.P,C and also amply elaborated in the judgments of Hon'ble Supreme

Court referred to above that the same could only be resorted with the sole object of finding the truth which will lead to a just decision of the case. In the instant case the final report qua cancellation had been submitted by the police after investigation, which is already on record, so no purpose could have been served by examining the aforesaid witness. The learned trial Court has considered all the aspects in the passing the impugned order which does not suffer from any infirmity so as to call for any interference therein. As a consequent, finding no merit in the instant petition, the same is hereby dismissed.

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

19.04.2024

Gyan

i)

Whether speaking/reasoned?

Yes/No

ii)

Whether reportable?

Yes/No

(SANJIV BERRY)

JUDGE