

2024:PHHC:080484



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

**CRM-M-5548-2024
DECIDED ON: 02.02.2024**

GURWINDER SINGH SAINI
.....PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Harmanjit Singh Jugait, Advocate and
 Mr. Rishab Wadhera, Advocate
 for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Section 482 Cr.P.C. seeking quashing of impugned order dated 05.01.2024 (Annexure P-1) whereby, an application under Section 311 Cr.P.C. filed by the petitioner-complainant seeking permission to lead additional evidence, has been dismissed.
2. Learned counsel for the petitioner submits that the petitioner was in custody for the last two years and finally he was released on bail by this Court vide order dated 03.07.2023 and thereafter, he collected the relevant documents and an application under Section 311 Cr.P.C. was filed seeking permission for leading additional evidence to prove documents i.e. affidavits of Raminder Singh, declarations of Inderpreet Kaur daughters of Jagtar Singh, declarations of Raminder Singh son of Jagtar Singh, declarations of Arvinder Kaur daughter of Sukhdev

Singh, acknowledge of Arvinder Kaur and acknowledgement of Inderpreet Kaur, as these documents were inadvertently omitted and the omission was neither intentional nor willful but due to the reason that he was confined in jail till 08.07.2023 in a case which is counter blast to the present complainant wherein, the complainant evidence was closed on 11.08.2023. Learned counsel also submits that the respondents are not going to be affected in any manner and no prejudice is going to be caused to anyone. At the end, learned counsel submits that the object of Section 311 Cr.P.C. is to enable the Court to find out the truth and render just decision of the case.

3. Heard arguments of learned counsel for the petitioner and I have also perused the impugned order dated 05.01.2024 (Annexure P-1).

4. The following principles will have to be borne in mind while dealing with an application under Section 311 Criminal Criminal Procedure Procedure Code read along with read along with Section Section 138 of the of the Evidence Act.”

(i) 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?

(ii) 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.

(iii) 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. (iv) 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.

(v) 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. (vi) The wide discretionary power should be exercised judiciously and not arbitrarily.

(vii) 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.

(viii) 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.

(ix) 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.

(x) 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.

(xi) 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.

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

(xiii) 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.

(xiv) 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.”

5. From perusal of file, it is evident that there is nothing on record to show that as to why the afore-said documents, which the petitioner wants to produce on record by way of additional evidence, were not produced in the first instance especially when these documents were very much within in his knowledge. More so, as per record more than 38 opportunities were afforded to the petitioner to lead his evidence. The petitioner was released in the present case from custody on 08.07.2023 and closed his evidence on 11.08.2023 after one month of release from custody. Within a span of one month, the case was fixed for 4 times for recording the evidence of the petitioner but he could not do so, for the reasons best know to his chest. Further more, the petitioner has also failed to show the relevancy of the documents. Merely, by stating that the documents are to be produced by the petitioner does not *ipso facto* establish their relevancy to the case. It was the duty to the petitioner to produce all the relevant material available with him in his evidence, but he failed to do so.

6. It is a well settled law that an application under Section 311 Cr.P.C. must not be allowed only to fill lacuna in the case of prosecution, or the defence or to disadvantage of the accused or to cause serious prejudice to the defence of the accused or to give an unfair advantage to the opposite party. Additional evidence

must not be received as a disguise for retrial or to change the nature of the case against the parties.

7. In case of V.N. Patil vs. K. Niranjana Kumar and Ors., (2021) 3 SCC 661, the aim of every court is to discover the truth. Section 311 Cr.P.C. is one of many such provisions which strengthen the arms of a court in its effort to unearth the truth by procedure sanctioned by law. At the same time, the discretionary power vested under section 311 Cr.P.C. has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meet the ends of justice.

8. In the present case, it is crystal clear that the application filed by the is nothing but an abuse of process of law, as the documents which he wants to place on record by way of additional evidence were within his knowledge from the date of registration of complaint and despite the said fact he could not do so, meaning thereby, the petitioner has filed the application under Section 311 Cr.P.C. just to fill up the lacunae.

9. In view of the discussions made hereinabove, this Court does not find any infirmity, illegality or perversity in the impugned order dated 05.01.2024 (Annexure P-1). Accordingly, the present petition stands dismissed with no order as to cost and the impugned order dated 05.01.2024 (Annexure P-1) is upheld.

02.02.2024

Sham

(SANDEEP MOUDGIL)
JUDGE

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