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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR No. 273-2024
Date of Decision:-29.02.2024

MANJEET SINGH

... Petitioner

Versus

STATE OF PUNJAB

... Respondent

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

Present:- Mr. Sukhbir Maandi, Advocate
for the petitioner.

Mr. Harpreet Singh, Addl. AG, Punjab.

SANJIV BERRY, J.(ORAL)

By way of the present revision petition, petitioner has challenged the orders dated 02.01.2024 and 05.01.2024 passed by learned Sessions Judge, Tarn Taran in FIR No. 333, dated 10.12.2008, under Sections 307, 224, 225, 353, 506, 186, 148, 149 IPC and 25, 27 of Arms Act, Police Station City Tarn Taran, District Tarn Taran whereby application under Section 311 Cr.P.C filed by the prosecution seeking permission to examine SI Amrik Singh as additional witness has been allowed and another application under Section 299 Cr.P.C read with Section 33 of the Indian Evidence Act filed by the prosecution for allowing prosecution to tender statements of prosecution witnesses Pargat Singh/complainant and SI Vijay Kumar/ Investigation Officer already recorded earlier in the trial of co-

accused to be read against the accused has been allowed, without appreciation of material evidence on record and hence the present petition.

2. It is *inter alia* contended by learned counsel for the petitioner that the learned trial Court has passed the impugned orders dated 02.01.2024 and 05.01.2024 whereby the application moved by the prosecution to examine SI Amrik Singh as additional witness under Section 311 Cr.P.C and also another application moved by the prosecution under Section 299 Cr.P.C, read with Section 33 of the Indian Evidence Act for placing on record testimonies of prosecution witnesses namely HC Pargat Singh and SI Vijay Kumar, since deceased, has been allowed wrongly without appreciating the provisions of law. He submits that SI Amrik Singh was never cited as witness by the prosecution while presenting the challan, so it was not relevant for the trial Court to have allowed his summoning as additional witness as the same would have caused prejudice to the rights of the petitioner. He further contends that the statement of HC Pargat Singh and SI Vijay Kumar were not recorded in the trial and as such the trial Court has wrongly allowed their testimonies to be produced in evidence against him. He submits that both the impugned orders have been passed by learned trial Court in a haste and suffer from serious infirmity, hence prays for reversal thereof by way of acceptance of the present petition.

3. On asking of the Court Mr. Harpreet Singh, Addl. AG, Punjab accepts notice on behalf of the State and 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 which necessitated summoning of SI Amrik Singh as additional witness in the case who infact

had sustained bullet injury in the occurrence alongwith HC Pargat Singh since deceased. He submits that this aspect is mentioned in the FIR itself and, as such, his examination is essential for the just decision of the case. He further submits that the petitioner had been absconding from the proceedings and was declared as proclaimed offender in the case and during the course of trial against co-accused, the statements of HC Pargat Singh, SI Vijay Kumar were recorded by learned trial Court and by operation of Section 299 Cr.P.C, the same could be used in evidence against the petitioner. He submits that no illegality has been observed by the learned trial Court in the aforesaid application moved by the prosecution with the primary object being the just decision of the case and in accordance with law, hence he prayed for dismissal of the petition.

4. After considering the submissions made by learned counsel for the parties and perusing the record, it transpires that so far as the factual matrix is concerned, it is not disputed that instant FIR No.333 dated 10.12.2008, under Sections 307, 224, 225, 353, 506, 186, 148, 149 IPC and 25, 27 of Arms Act, Police Station City Tarn Taran, District Tarn Taran had been registered, against the petitioner alongwith co-accused Davinder Singh and Balbir Singh. It is not disputed that the petitioner along with co-accused were arrested in this case and after completion of investigation, challan was presented in Court wherein the charges were framed and the trial commenced against the petitioner as well as the co-accused. However, during the course of trial the petitioner absconded himself from proceedings and vide order dated 15.04.2013 passed by Additional Sessions Judge, Tarn Taran petitioner was declared as proclaimed offender in this case. Whereas

the co-accused Davinder Singh and Balbir Singh faced the trial and were convicted. It is also not disputed that during the course of trial the complainant HC Pargat Singh and also investigating officer SI Vijay Kumar were both examined as prosecution witnesses PW-2 and PW-3 respectively and on the petitioner being arrested after being declared as proclaimed offender in this case, the trial qua petitioner commenced. In the meanwhile, both these witnesses, namely PW-2 HC Pargat Singh and PW-3 SI Vijay Kumar had died. This factual position has not been disputed.

5. During the course of trial against the petitioner the prosecution had moved application under Section 311 Cr.P.C for summoning of SI Amrik Singh as additional witness which was allowed by learned trial Court vide impugned order dated 02.01.2024.

6. After perusing the impugned order dated 02.01.2024 and considering the respective arguments qua the same, it is observed that at the outset, the learned trial Court has not committed any illegality or infirmity in allowing the same. No doubt, SI Amrik Singh was not cited as witness while presenting of challan by the prosecution, as has been contended by learned counsel for the petitioner but this *ipso facto* will not be sufficient ground to bar the powers under Section 311 Cr.P.C given to the learned trial Court to summon him as additional witness, especially in the fact and circumstances of the present case wherein it is evident from the case of the prosecution in the FIR that said SI Amrik Singh was also one of the victim upon whom the petitioner had allegedly open fired and injured him as well as HC Pargat Singh. It is not disputed that HC Pargat Singh was the complainant in the instant FIR and SI Vijay Kumar happens to be the Investigating Officer of

the case and both these material witnesses have since expired. Their testimonies were recorded in the trial proceedings against the co-accused Davinder Singh and Balbir Singh after the petitioner absconded and was declared as proclaimed offender in this case and the prosecution evidence qua petitioner was recorded under Section 299 Cr.P.C. After his arrest the trial against him commenced but by then both the material witnesses HC Pargat Singh and SI Vijay Kumar had died. It is specifically mentioned in the impugned order that the presence of SI Amrik Singh (then HC) at spot is specifically mentioned in the FIR itself upon whom the petitioner had allegedly fired at the time of occurrence. His name not being mentioned during course of presentation of challan in the list of witnesses will not itself bar his examination as additional witness. He being injured in the occurrence, certainly is a relevant witness to the occurrence as is mentioned in the FIR itself and more so, when the other witness to the occurrence HC Pargat Singh has since died. He is not stranger to the occurrence, therefore, his examination as additional witness is certainly for the just decision of the case. The learned trial Court has considered all these material aspects and given due hearing to the learned counsel for the petitioner before deciding the application vide impugned order dated 02.01.2024 which is well within the parameters laid under Section 311 Cr.P.C and as such does not suffer from any infirmity so as to call for any interference therein.

7. So far as the order dated 05.01.2024 is concerned the learned trial Court had allowed the application under Section 299 Cr.P.C. The said application was moved by the prosecution on the ground that the statements of the prosecution witness HC Pargat Singh-complainant injured and SI

Vijay Kumar-Investigating Officer of the case were recorded during the course of trial wherein co-accused Davinder Singh and Balbir Singh were facing trial but the petitioner had absconded and was declared proclaimed offender in the case. Since the charge was already framed in the case against the petitioner as well as co-accused, consequent upon the petitioner absented and being declared as proclaimed offender during the course of trial, the prosecution evidence was recorded qua the co-accused facing the trial and also against the petitioner under Section 299 Cr.P.C. On the basis of evidence so adduced, the co-accused Davinder Singh and Balbir Singh held guilty and convicted. The prosecution intended to bring on record the testimonies of PW's HC Pargat Singh and SI Vijay Kumar recorded under Section 299 Cr.P.C against the petitioner, since both these material witnesses have already expired, after their testimony was recorded by court under Section 299 Cr.P.C qua the petitioner, then an absconder.

8. It is apt to mention here that Section 299 of the Code of Criminal Procedure, provides as under:-

“299. Record of evidence in absence of accused.—(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try 1 [, or commit for trial,] such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the

case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.”

9. Before proceeding further, a glance at the Provision 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.”

10. While disposing of the application vide impugned order dated 05.01.2024, it transpires that the learned trial Court has considered all the material facts and circumstances of the case. Infact the learned Court had declined the request made by the prosecution to consider the statements of PW's HC Pargat Singh and SI Vijay Kumar since deceased under the Provisions of Section 33 of the Indian Evidence Act and this aspect has not been challenged by the prosecution. Vide the impugned order dated 05.01.2024 the learned trial Court had only allowed the application of the

prosecution so far as it pertains to allowing the testimonies of PW-2 HC Pargat Singh and PW-3 SI Vijay Kumar, who were examined in the trial Court against co-accused while the petitioner was declared as proclaimed offender in the case and who had since died, by the time the trial against the petitioner commenced after his rearrest. As mentioned above, the learned trial Court has passed these orders strictly in accordance with the provisions contained in Section 299 Cr.P.C, wherein it is categorically provided that when the accused person absconds and there is no immediate prospect of arresting him then, the Court competent to try him for the offence, may in his absence, examine the witnesses produced on behalf of the prosecution and record their deposition. It is further provided under Section 299(2) Cr.P.C that upon subsequent arrest of such person any such deposition so recorded may be given in evidence against him, in the trial for the offence for which he is charged, if at the relevant time such deponent is dead or incapable of giving evidence.

11. Undoubtedly, PWs HC Pargat Singh and SI Vijay Kumar had been examined in the Court during trial after the petitioner absconded and was declared as proclaimed offender, whereas admittedly, the charge was framed in his presence. Upon rearrest of the petitioner, the trial qua him commenced but by then HC Pargat Singh and SI Vijay Kumar had since expired so the learned trial court acted well within its jurisdiction in allowing the application under Section 299 Cr.P.C. to allow the reading of the testimonies of the aforesaid witnesses since deceased against the petitioner and no illegality or infirmity could be observed in the impugned orders so as to call for any interference therein.

12. No other point was raised by learned counsel for the petitioner during course of arguments. Considering the above facts and circumstances, finding no infirmity in the impugned orders dated 02.01.2024 and 05.01.2024, no ground is made out to interfere therein in exercise of revisional jurisdiction of this Court, as a consequent finding no merit in the instant petition, the same is hereby dismissed.

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

(SANJIV BERRY)
JUDGE

29.02.2024

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |