

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

**CRM-M No.6633 of 2024 (O&M)
Date of decision : 08.02.2024**

Parv Nanda & anr.

..... Petitioners

versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. J.S.Mehndiratta, Advocate
Mr. Rahul Dhandha, Advocate and
Ms. Jyotnoor Kaur Sethi, Advocate
for the petitioners.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

1 Prayer is for quashing of order dated 05.01.2024 (Annexure P-10) passed by Additional Sessions Judge, Karnal whereby application filed by the petitioners under Section 311 of the Code for recalling witnesses namely PW-2 Naseeb and PW-5 Manoj stands dismissed.

2 Petitioners are facing trial in FIR No.320 dated 12.09.2018 registered under Sections 302/34 IPC (to which Section 216 IPC and Section 3(2) (v) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 were added later on) at Police Station Madhuban, District Karnal.

3 During the course of trial prosecution examined one Naseeb as PW-2 and Manoj as PW-5 and they supported the prosecution.

4 On 04.05.2023 two witness namely Chander Pal s/o Tara Singh and Parteek S/o Ram Tirath were examined as PW-12 & 13 respectively and

it is being alleged that the said witnesses in their cross examinations admitted that so far as Naseeb and Manoj are concerned, they were not present on the spot. The application was moved by the petitioners under Section 311 of the Code, seeking re-examination of PW-2 Naseeb & PW-5 Manoj and the same stands declined by the trial Court observing as under :-

“8. Perusal of file shows that complainant PW-2 Naseeb had moved an application under section 311 Cr.P.C for recalling Pws namely PW-12 Chanderpal, PW-13 Prateek and PW-14 Kamal Kumar. It is averred in the application by complainant Naseeb PW-2 that inadvertently, he gave an application to the Hon'ble Court forwarded by the Public Prosecutor to give up the abovementioned material eye witnesses as being won over by the accused persons on 20.08.2019 and because of this reason, the Hon'ble Court gave up all the abovementioned three eye witnesses as being won over by the accused by the order of even date. It is further averred that infact the aforesaid eye witnesses were never won over by the accused persons and this fact necessitated him to move the present application for recalling the aforesaid eye witnesses u/s 311 Cr.P.C for the just and proper decision of the present case. Reply dated 07.02.2023 to the same has also been moved by accused Parav Nanda and Ashok Nanda through their counsel, wherein they averred that the complainant had got given up the abovesaid witnesses on his own assumptions, however, those witnesses have actually no connection with the alleged occurrence and the complainant is not entitled the relief qua under section 311 Cr.P.C at this belated stage. Despite filing of the reply, learned defence counsel namely Shri Shubham Kalia Advocate and Shri Amit Rana, Advocate have put their no objection to examine the aforesaid witnesses to the application itself. Consequently, the aforesaid witnesses namely Chander Pal, Prateek and Kamal were examined as PW-12 to PW- 14, who turned hostile and did not support the case of prosecution. The aforesaid facts also shows that the present application has been moved under section 311 Cr.P.C by the accused Parav Nanda and Ashok Nanda through their counsel, so that PW-2 Naseeb and PW-5 Manoj would also turn hostile to achieve the ulterior motive of the accused to defeat the ends of justice under the garb of the aforesaid application. It is pertinent to mention that all the prosecution witnesses have been completely examined and cross-examination of only one PW-6 namely Shri Som Dutt, DSP, Gharaunda is pending as also admitted by the learned PP for the State as well as

learned defence counsel.”

5 Learned counsel for the petitioners by assailing the said order has submitted that once it has come on record that Naseeb & Manoj were not present on the spot, the petitioners are well within their rights to recall them and put suggestion with respect to their not being present on the spot as at the end of day the objective of the trial is to unearth the truth.

6 I have heard learned counsel for the petitioners and have gone through the records of the case.

7 The provision as contained under Section 311 of the Code reads as under :-

¹[311A. Power of Magistrate to order person to give specimen signatures or handwriting. If a Magistrate of the first class is satisfied that, for the purposes of any investigation or proceeding under this Code, it is expedient to direct any person, including an accused person, to give specimen signatures or handwriting, he may make an order to that effect and in that case the person to whom the order relates shall be produced or shall attend at the time and place specified in such order and shall give his specimen signatures or handwriting:

Provided that no order shall be made under this section unless the person has at some time been arrested in connection with such investigation or proceeding.]

8 The same has been interpreted by the Supreme Court in detail in the case of ***Rajaram Prasad Yadav Vs. State of Bihar & anr. (2013) 14 SCC 461*** and the principles have been culled out 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.”

9 In the present case PW-2 and PW-5 were cross-examined by the defence and whatever contradictory stand the other witnesses have taken shall be subject matter of the analysis by the trial Court at an appropriate stage. The reason that the subsequent witnesses have stated something which contradicts the testimony of the earlier witnesses cannot be a ground for invoking Section 311 of the Code.

10 Resultantly this Court does not find any reason to interfere in the well reasoned order passed by the trial Court.

11 Consequently, the present petition stands dismissed.

(PANKAJ JAIN)
JUDGE

08.02.2024
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No