

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-8402-2024
Date Of Decision-16.02.2024

KIRAN BALAPETITIONER

VERSUS

STATE OF PUNJABRESPONDENT

CORAM: HON’BLE MR. JUSTICE SANDEEP MOUDGIL

PRESENT: Mr. Naveen Batra, Advocate for the petitioner.
Mr. Rajiv Verma, DAG, Punjab.

SANDEEP MOUDGIL, J. (Oral)

The instant petition has been sought under section 482 Cr.P.C. for setting aside of imugned order dated 05.02.2024(Annexure P-3) passed by JMIC, Shri Anandpur Sahib vide which application under section 311 Cr.P.C(Annexure P-2) for recalling two eye witnesses namely Mamta Rani and Paramjeet for cross examining in FIR No. 18 dated 02.03.2016 under section 420 has been declined and further seeking one oppurtunity to cross examine Mamta and Paramjeet as PW-2 and PW-3 respectively.

For brevity, counsel for the petitioner contends that the petitioner, who is complainant in FIR NO.18 dated 02.03.2016, along with aggrieved Paramjit Kaur and Mamta Rani have been duped by the accused by entering into an agreement to sell the land which was not existing

therefore,after completion of investigation charges were framed on 15.12.2016 and matter was posted for prosecution evidence. The complainant Kiran Bala along with Mamta Rani and Paramjeet were examined as PW-1,PW-2 and PW-3 respectively and thereafter an application was moved by the State under section 319 Cr.P.C. Therefore, cross examination of these witnesses could not be done where the counsel for the accused took more than a year to file the reply and in the meanwhile, PW-1 Kiran Bala was cross examined on 09.03.2021 and the application under section 319 Cr.P.C was dismissed on 07.12.2021 after which notice was issued to PW-2 and PW-3 for their cross examination.

Counsel for the petitioner vehemently contends that the order dismissing the application under section 319 Cr.P.C was challenged by the complainant by filling revision petition before the session court and the original file being with the session court, the trial court could not examine PW-2 and PW-3 and thereafter, the court posted the matter for statement of accused under 313 Cr.P.C.

Counsel for the petitioner strenuously argues that the cross examination of PW-2 and PW-3 is very material and could not be done for no fault of complainant wherein neither the witnesses have been treated as nil and such arbitrary order would only jeopardize the case and cause grave injustice to the complainant and PW-2 and PW-3 who had been duped into the hands of the accused.

After having heard the counsel for the petitioner and perusal of the record, it is clear that the petitioner registered FIR NO.18 dated 02.03.2016 under section 420 against one Narinder Singh for duping Kiran Bala, Mamta Rani, Paramjeet on the pretext of selling land which in reality

did not even exist and in pursuance to the trial after framing of charges, the matter was kept for prosecution evidence wherein Kiran Bala, Mamta Rani, Paramjeet were examined as PW-1, PW-2, PW-3 respectively. After moving an application under section 319 Cr.P.C, the cross examination of the above stated witnesses were not done as the matter was adjourned for filing reply to application under section 319 Cr.P.C which took more than a year and in the meanwhile, PW-1 was partly cross examined on 17.02.2020 and completely cross examined on 09.03.2021 and ultimately application under section 319 Cr.P.C was dismissed on 07.12.2021 and thereafter notice was issued to PW-2 and PW-3 for their cross examination.

Further, the petitioner-complainant filed a revision petition challenging the order of dismissal of application under Section 319 Cr.P.C and the original file being with the session court made it unfeasible for the trial court to cross examine PW-2 and PW-3 from 14.07.2022 to 29.11.2023 and thereafter the court while taking into consideration that matter has been pending since 2016, without calling the witness for cross examination adjourned the matter for examining the statement of accused under section 313 Cr.P.C.

This court is of the considered view that powers under section 311 Cr.P.C are though absolute as granted under the statute but it is to be exercised judiciously in a manner which should not give unfair advantage to any one of the rival sides and allow one of the parties to recall the witness without any prudent reason. At this stage it would be apposite to read section 311 Cr.P.C 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.

Further, the scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judicially and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under section 311 Cr.P.C must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the 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. The power conferred under section 311 Cr.P.C. 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 great caution and circumspection.

In the light of the facts that the case was registered against the accused in 2016 and charges were framed on 12.12.2016, since then ample opportunities were granted for the prosecution evidence till 11.01.2024 and despite State having plethora of manpower to procure the presence of the witness, failed to perform its duty in time. Moreso, this lackadaisical approach should not harm or cause injustice to the accused. There has to be strong and valid reasons for invoking power under Section 311 Cr.P.C which

should be exercised with care, caution and circumspection as has been held by the Hon'ble Apex Court in "*Raja Ram Parshad Yadav versus State of Bihar*"- AIR 2013, SC-3081.

Therefore in the interest of justice, this court finds no merit in the present petition.

Dismissed.

(SANDEEP MOUDGIL)
JUDGE

16.02.2024
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<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>