

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-388-2024

DECIDED ON: 26.02.2024

VIKRAM SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Surinder Gandhi, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The instant petition has been preferred assailing the order dated 17.02.2024 passed by Additional Sessions Judge, Bhiwani, whereby the application under Section 311 Cr.P.C., preferred by the present petitioner has been declined.

Learned counsel for the petitioner contends that the cross-examination of witness namely Bala Devi earlier on certain material aspects could not be conducted and certain information has been sought under RTI on account of which she has been recalled and further cross-examination of her is just and necessary for fair adjudication of the present case.

He also relies heavily on “*P. Sanjeeva Rao versus State of Andhra Pradesh*”, reported in AIR(SC) 2012, page 22 to 42 that the scope of Section 311 Cr.P.C. is very wide and the relevant paras No.12 and 16 are reproduced hereinbelow:-

“12. The nature and extent of the power vested in the Courts under Section 311 Criminal Procedure Code to recall witnesses was examined by this Court in Hanuman

Ram v. The State of Rajasthan & Ors., 2008(4) RCR (Criminal) 823 : (2008)15 SCC 652. This Court held that the object underlying Section 311 was to prevent failure of justice on account of a mistake of either party to bring on record valuable evidence or leaving an ambiguity in the statements of the witnesses. This Court observed :

"This is a supplementary provision enabling, and in certain circumstances imposing on the Court, the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

"The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is

a general section which applies to all proceedings, enquires and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

16. We are conscious of the fact that recall of the witnesses is being directed nearly four years after they were examined in chief about an incident that is nearly seven years old. Delay takes a heavy toll on the human memory apart from breeding cynicism about the efficacy of the judicial system to decide cases within a reasonably foreseeable time period. To that extent the apprehension expressed by Mr. Rawal, that the prosecution may suffer prejudice on account of a belated recall, may not be wholly without any basis. Having said that, we are of the opinion that on a parity of reasoning and looking to the consequences of denial of opportunity to cross-examine the witnesses, we would prefer to err in favour of the appellant getting an opportunity rather than protecting the prosecution against a possible prejudice at his cost. Fairness of the trial is a virtue that is sacrosanct in our judicial system and no price is too heavy to protect that virtue. A possible prejudice to prosecution is not even a price, leave alone one that would justify denial of a fair opportunity to the accused to defend himself."

He further argues that prime object under Section 311 Cr.P.C. is

to prevent the failure of justice and on account of a mistake of either party to
bring on record valuable evidence or leaving an ambiguity in the statements

of the witnesses should not be ignored by the Court below while dealing with the application under Section 311 Cr.P.C.

This Court has minutely gone through the aforesaid judgment along with another case law i.e. ***“Hanuman Ram versus The State of Rajasthan & others”, 2008(4) RCR (Criminal) 823*** along with the provisions of Section 311 Cr.P.C., 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 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.”

A collective reading of the provisions of the Statute which is a procedural law along with the case law as relied upon by the petitioner, it is absolutely clear that an applicant seeking recalling of the witness under Section 311 Cr.P.C. has to justify reasons and the material which is to be put to the witness for which it would be just and necessary to call the same.

A conspicuous reading of Section 311 Cr.P.C. would show that widest of the powers have been invested with the Courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a pre-fix to “court”, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said

expression “any” as a pre-fix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the Court was only in relation to such evidence that appears to the Court to be essential for the just decision of the case. Section 138 of the Evidence Act, prescribed the order of examination of a witness in the Court. Order of re-examination is also prescribed calling for such a witness so desired for such re-examination. Therefore, a reading of Section 311 Cr.P.C. and Section 138 Evidence Act, insofar as it comes to the question of a criminal trial, the order of re-examination at the desire of any person under Section 138, will have to necessarily be in consonance with the prescription contained in Section 311 Cr.P.C. It is, therefore, imperative that the invocation of Section 311 Cr.P.C. and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case as noted by us earlier. The power vested under the said provision is made available to any Court at any stage in any inquiry or trial or other proceeding initiated under the Code for the purpose of summoning any person as a witness or for examining any person in attendance, even though not summoned as witness or to recall or re-examine any person already examined. Insofar as recalling and re-examination of any person already examined, the Court must necessarily consider and ensure that such recall and re-examination of any person, appears in the view of the Court to be essential for the just decision of the case. Therefore, the paramount requirement is just decision and for that purpose the essentiality of a person to be recalled and re-examined has to be ascertained. To put it differently, while such a widest power is invested with the Court, it is

needless to state that exercise of such power should be made judicially and also with extreme care and caution.

In this context, reference may be made to “**Jamatraj Kewalji Govani vs. State of Maharashtra**”, AIR 1968 SC 178 rendered by the Apex Court on the interpretation of Section 311 Cr.P.C. wherein it was highlighted as to the basic principles which are to be borne in mind, while dealing with an application under Section 311 Cr.P.C. The relevant extract is reproduced as under:-

“14. It would appear that in our criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it. In other words, where the court exercises the power under the second part, the inquiry cannot be whether the accused has brought anything suddenly or unexpectedly but whether the court is right in thinking that the new evidence is needed by it for a just decision of the case. If the court has acted without the requirements of a just decision, the action is open to criticism but if the court's action is supportable as being in aid of a just decision the action cannot be regarded as exceeding the jurisdiction.” (Emphasis added)

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances

can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial. Thus, it is essential that the rules of procedure that have been designed to ensure justice are scrupulously followed, and the court must be zealous in ensuring that there is no breach of the same.

The Supreme Court in *Rajaram Prasad Yadav vs State Of Bihar & Anr.* 2013 (14) SCC 461, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, laid down the following principles required to be borne in mind by the Courts at the time of deciding such applications:-

- 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 Cr.P.C. 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 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 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 Cr.P.C. 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 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 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.

Keeping in view the principles enunciated by the Apex Court in We find that the factors noted by the trial Court and the conclusion arrived at by it were all appropriate and just, while deciding the application filed under Section 311 Cr.P.C. We do not find any bonafides in the application of the petitioner, while seeking the permission of the Court under Section 311 Cr.P.C. for re-examination/further cross-examination of Bala Devi by merely alleging that on the earlier occasion the said PW could not be properly cross-examined on certain material aspects – on enmity between the complainant and petitioner/accused on account of RTI application before the said FIR.

A perusal of the application dated 12.02.2024 (Annexure P-1) as well as the pleadings of the instant petition and the submissions made by Mr. Gandhi, learned Advocate appearing on behalf of the petitioner, this Court is of firm view that same are vague wherein the date the said RTI information has been sought and what is the material to put to the alleged

witness PW Bala Devi is neither pleaded that how the recalling of such witness for further cross-examination would be detrimental to the cause of justice and in that eventuality the averments made in the application dated 12.02.2024 (Annexure P-1) are found to be vague, wherein petitioner has failed to make out plausible explanation for recalling of such witness, which would tantamount to delay of trial proceedings as has been rightly observed and held by the Court below.

Hence, this Court does not find any infirmity and perversity in the order passed by the trial Court and the present petition stands dismissed having no merits.

26.02.2024
Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

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