

109 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-532-2024 (O&M)
Decided on:-24.04.2024

Jagsir Singh @ Manga and others

....Petitioners..

vs.

State of Punjab

....Respondent.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. N.S. Diwana, Advocate,
for the petitioners.

Mr. Athar Ahmed, DAG, Punjab.

HARKESH MANUJA J. (Oral)

1. By way of present petition filed at the instance of petitioners-accused, challenge has been laid to an order dated 08.01.2024 passed by the Court of Judge, Special Court, Fatehgarh Sahib, whereby an application under Section 311 Cr.P.C., moved at the instance of prosecution, has been partly allowed.

2. In the present case, petitioners were arrayed as accused in FIR No.117, dated 27.09.2018, registered under Section 22 of the NDPS Act, 1985, at Police Station City Sirhind, District Fatehgarh Sahib.

2.1 During trial, PW-2 Rajinder Singh, who at the relevant time was MHC appeared as witness and deposed that the sample was taken from him by Constable Harpal Singh, whereas, later PW-6 ASI Amrik Singh appeared as prosecution witness and deposed that the sample was taken from MHC by him thereby, creating a contradiction as regards receipt of sample from the MHC. Besides it, the report of FSL though being part of the record was not

exhibited in the prosecution evidence. Faced with this, an application came to be filed at the instance of prosecution, invoking Section 311 Cr.P.C. seeking permission to re-examine PW-2 Rajinder Singh besides exhibiting the report of FSL and also to prove on record the relevant DDR entries and register No.19 as regards the movement of sample.

2.2 The aforesaid application was seriously opposed in part while raising no objection qua the exhibition of FSL report, which already formed part of judicial file. The application came to be partly allowed by the learned Judge, Special Court, Fatehgarh Sahib, vide order dated 08.01.2024, resulting into allowing the prosecution to prove on record the DDR entries and register No.19 regarding the movement of case property/sample while declining its prayer qua further examination of PW-2.

3. Impugning the aforesaid order, learned counsel for the petitioners submits that the DDR entries as well as register No.19, which relate to the movement of case property were unless made part of the final report under Section 173(2) Cr.P.C., no such document can be permitted to be proved on record at this belated stage after a period of more than 5 years so as to fill-up lacuna as the same would cause serious prejudice to the rights of the petitioners-accused.

4. On the other hand, learned State counsel submits that the documents sought to be produced are from the safe custody of the Investigating Agency, which are very much essential to lay down entire truth before the Court below. He also submits that the petitioners would not be prejudiced by these documents being brought on record as they would be having sufficient opportunity to cross-examine the witnesses while producing these documents besides having chance to lead their evidence in

defence to rebut those.

5. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made on behalf of the petitioners.

6. A perusal of the record shows that the only prayer made by the respondent is to produce on record the relevant DDR entries and register No.19 which relate to the case property and are thus very much essential for the prosecution in order to prove its case. The documents sought to be produced are very much necessary for bringing the truth on record. Undoubtedly, the documents sought to be produced by the prosecution are going to help the trial Court to decide the matter in a complete and effective manner being proof of the recovery involved. Though, there has been some delay on the part of the prosecution in this regard, however, such procedural technicalities cannot be applied absolutely to scuttle the substantial rights of the parties, as the procedure more or less regulates the course of proceedings only and not the substantial cause, especially in the given facts, when there is no inordinate or unexplained delay in approaching the Court while moving the present application.

7. In the humble opinion of this Court, even the factum of filling-up of lacuna as argued on behalf of petitioners in the given facts is without substance as the present is not a case of no evidence at all by the prosecution.

7.1 More importantly, one of the object of Section 311 Cr.P.C. is to prevent failure of justice in case of an inadvertence on the part of either of the parties in bringing the material and relevant evidence/documents on record required essentially to remove ambiguity in the statements of

witnesses examined. Applying the same, in the given facts grant of opportunity to the prosecution to prove on record relevant document as prayed for in the application is essential to afford fair and proper opportunity and for just decision of the matter and also to achieve the object of finding out the truth as in the absence thereof, the same would cause injustice to the prosecution, thereby defeating the ends of justice.

8. In view of the discussion made herein-above, finding no illegality or perversity with the reasoning recorded by the Court below while passing the impugned order dated 08.01.2024, the present petition being devoid of merits is resultantly, dismissed.

24.04.2024

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/ No