

110

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-450-2024 (O&M)
Date of decision: 04.03.2024

Smt. Neelam Bhosle

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. U.K. Agnohotri, Advocate for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

CRM-10148-2024

Allowed as prayed for.

CRR-450-2024

1. Petitioner has filed the present petition against the order dated 29.11.2022 passed by the learned trial Court whereby the evidence of the prosecution was closed by order in criminal case having FIR No.130 dated 19.06.2014 under Sections 323/379/420/427/452/467/506 read with Section 120-B of IPC, Police Station Pinjore and order dated 13.02.2024 whereby an application filed by the petitioner and her husband Rajneesh Bhosle under Section 311 Cr.P.C to allow the prosecution to examine both of them as prosecution witnesses was dismissed by the trial Court of Judicial

Magistrate, Ist Class, Kalka.

2. Notice of motion.

3. Mr. Vishal Kashyap, DAG, Haryana, accepts notice on behalf of the State.

4. Counsel for the petitioner submits that FIR in the present case was registered on the basis of the complaint filed by petitioner under Section 156 (3) Cr.P.C. with the Illaqa Magistrate concerned against Ramesh Kumar and others. Challan was presented by the police against the accused persons wherein petitioner and her husband Rajneesh Bhosle were cited as witnesses on behalf of the prosecution along with some other persons. During trial, prosecution examined certain witnesses and the trial Court closed the prosecution evidence vide order dated 29.11.2022, without issuing any notice, summons or warrants to the petitioner and her husband and petitioner later on came to know about passing of the said order. That subsequently, application under Section 311 Cr.P.C. was also filed by the petitioner seeking permission of the Court for her and her husband's examination. However, the trial Court dismissed the said application vide order dated 13.02.2024, in an illegal manner. It is further submitted that the testimonies of petitioner and her husband are required for proper adjudication of the case, both of them being material witnesses. Counsel for the petitioner further submits that both the impugned orders are unsustainable and deserve to be set aside.

5. On the other hand, the counsel for the petitioner submits that present petition be disposed of in accordance with law.

6. After the registration of FIR, police presented challan and then

trial was commenced. Admittedly, petitioner is complainant in the present case and her husband is also cited as a prosecution witness. Both of them are material witnesses. From the perusal of the record, it appears that learned trial Court closed the prosecution evidence without examining petitioner and her husband, vide order dated 29.11.2022. The said order was passed by the trial Court on failure of the prosecution to produce its remaining evidence. The application under Section 311 Cr.P.C. filed by the petitioner seeking permission of the Court for examination of petitioner and her husband was also dismissed by the trial Court vide order dated 13.02.2024 on the ground that the said application was moved only to delay the trial and the applicant (complainant) cannot take the benefit of her own wrong.

7. That from the perusal of the order dated 21.11.2022 passed by the learned trial Court as is reproduced in para number 13 of the petition, summons issued to petitioner and her husband were received back with report that they are not traceable. Prosecution was directed to trace the address of the said witnesses and produce the evidence on 29.11.2022. PW ASI Surender Kumar was also directed to be summoned throughailable warrants for that date while PW Shiva Nand, Ramesh Kumar and Inspector Mahender Singh were also directed to be summoned for the next date fixed i.e. 29.11.2022. From the perusal of record, it is evident that on 29.11.2022 PW Shiva Nand and Ramesh Kumar were examined as PW-8 and PW-9 while PW SI Surender Kumar was given up being unnecessary witness. No other PW was present. Summons of petitioner and her husband were not issued as prosecution did not file their correct address and resultantly,

prosecution evidence was closed by order on that date.

8. From the aforesaid, it is apparent that the trial Court did not make any sincere efforts to procure the presence of petitioner and her husband as witness during trial, by calling SHO concerned to appear in person before the trial Court. Even no letter was sent to Superintendent of Police concerned in order to secure the presence of petitioner and her husband as witness. In case the summons are duly served on the witnesses and they do not appear for their examination, the Court is not powerless and can take coercive action against the said witnesses. It appears that the trial Court failed to issue any coercive process for securing the presence of aforesaid two material witnesses. Thus, the order dated 29.11.2022 whereby the evidence of prosecution was closed by order by the learned trial Court is not in accordance with law and thus, deserves to be set aside.

9. Admittedly, in the present case, the petitioner and her husband are material witnesses and their evidence appears to be essential to just decision of the case. Section 311 Cr.P.C empowers the trial Court to summon any such witness, in case his/her testimony is necessary for just and proper adjudication of the case. The object underlying Section 311 Cr.P.C 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. If evidence of any witness appears to the Court to be essential to the just decision of the case, the trial Court has got power to summon and examine any such person and exercise of such 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. The discretionary power under Section 311 Cr.P.C. can be exercised at any stage of trial but judiciously, in order to meet the ends of justice.

10. In the instant case, the FIR was lodged on the basis of the complaint given by petitioner and the other witness is her husband Rajneesh Bhosle and both of them are material witnesses and their testimony is required for just decision of the case. Thus, the impugned order dated 13.02.2024 passed by the trial Court is not sustainable being not passed in consonance with the Section 311 Cr.P.C. and deserves to be set aside.

11. In light of the above discussion, the present petition is hereby allowed and impugned orders dated 29.11.2022 and 13.02.2024 are hereby set aside and prosecution is permitted to examine, petitioner and her husband by availing one opportunity for that purpose, with regard to which specific date is to be fixed by the trial Court. The petitioner and her husband are directed to appear before the trial Court on that specific date for recording of their statements.

12. The present petition is disposed of in aforesaid terms.

04.03.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No