



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

CRM-M-11995-2019 (O&M)

Date of Decision : 13.11.2024

TEJBIR SINGH AND ANOTHER

.....Petitioners

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Kartar Singh Malik-I, Advocate,
for the petitioner.

Mr. Bhupender Singh, DAG, Haryana.

Mr. Ravinder Hooda, Advocate,
for respondent no.2.

KULDEEP TIWARI, J.(Oral)

1. Through the instant petition, filed under Section 482 Cr.P.C., prayer is made for setting aside of impugned order dated 01.03.2019, passed by the learned Judicial Magistrate Ist Class, Rohtak (Annexure P-5), in case no.44/18.05.2012-06.04.2018, whereby, the application to lead additional evidence under Section 311 Cr.P.C. moved by the complainant (respondent no.2 herein), was allowed, whereas, the evidence of the complainant's side, had already been closed by court order, dated 10.12.2018.

2. Learned counsel for the petitioners, in an attempt to throw challenge to the impugned order (*supra*), made twofold submissions, which are as under:-

(i) That the court had earlier closed the evidence of the complainant vide court order, dated 10.12.2018, and

thereupon, the statement of accused (petitioners herein) under the provisions of Section 313 Cr.P.C. was recorded, and thereafter, the case was fixed for defence evidence. Therefore, the learned trial court concerned, would have no power to recall its earlier orders and to grant permission to the complainant/ respondent no.2 for examining the witnesses by way of additional evidence.

(ii) That the complainant/respondent no.2 had hidden the relevant facts from the learned trial court concerned, as the counsel for the complainant, was regularly appearing, therefore, he was well aware about the proceedings. In view of the application so preferred by the complainant, is in fact by mentioning the wrong facts.

3. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has also examined the order impugned before this Court, however, it does not find any illegality and perversity in the impugned order requiring any interference.

4. The issue as raised by learned counsel for the petitioners, is infact a misplaced argument, as section 311 Cr.P.C. is an independent discretionary power with the learned trial court concerned, to summon any person, as witness, or examine any person in attendance, recall or re-examine an person, who already stands examined, at any stage of trial, in case it appears to the latter concerned, that same is essential for the just decision of the case in hand.

5. Exercising powers under Section 311 Cr.P.C., would not be construed as recalling and review of its own order. Therefore, this argument is infact a misplaced argument, and the same is being recorded only for the purpose of its rejection.

6. In the instant case, the learned trial court concerned, has specifically observed that though five effective opportunities were granted to the complainant/respondent no.2, for after-charge evidence, however, no summons to the complainant and his witness was issued by the learned trial court concerned, and the latter concerned, admits its mistake and thereupon, allowed this application under Section 311 Cr.P.C. The relevant extract of the impugned order reads as under:-

“In the instant case, it appears from the file that after framing of charge against the accused persons, the defence counsel has suffered the statement that he want of cross-examine all the witnesses examined by the complainant in pre-charge evidence and thereafter, after adjournment the case for after charge evidence of five times, the evidence of the complainant was closed. However, no summon to the complainant and his witnesses was issued by this court which is inadvertent mistake on the part of this court. The applicant/complainant has stated that he does not want of futher examine any witness and his evidence already recorded in pre-charge evidence would be treated is after charge evidence. If the opportunity is not given to the implainant, to cross-examine his prosecution witnesses, it will effect the right of the complainant. However, if the defence counsel made cross-examination of the complainant witnesses, then no prejudice will be caused to the defence counsel and the case will be decied on merits by this court.”

7. In view of the aforesaid factual aspect, this Court does not find that the learned trial court concerned, has erroneously exercised its discretionary powers, endowed under Section 311 Cr.P.C.

8. Consequently, the instant petition is, hereby, **dismissed**.

9. All pending application(s), if any, also stand **disposed** of accordingly.

November 13, 2024
dharamvir

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No