



## IN THE HIGH COURT OF PUNJAB &amp; HARYANA AT CHANDIGARH

154+201

CRM-M-17731-2022(O&amp;M)

Date of order: 02.12.2024

Santosh

.....Petitioner(s)

Vs.

State of Haryana &amp; Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Ankur Lal, Advocate  
for the petitioner.

Mr. Praveen Bhadu, Asst. AG Haryana  
Assisted by ASI Manish Kumar.

Mr. Ajay Kumar Gupta, Advocate  
for respondent No.2.

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**Nidhi Gupta, J.**

Present petition under Section 482 Cr.P.C. is filed seeking quashing of the impugned order dated 14.03.2022 (Annexure P5) passed the learned trial Court vide which the application filed by the petitioner under Section 311 Cr.P.C. for recalling the witness has been dismissed in case FIR No.42 dated 18.01.2020 registered under Sections 498-A and 304-B IPC at police Station City Bhiwani; with further prayer to allow the application dated 17.02.2022 (Annexure P3) in the interest of justice and equity.

2. Learned counsel for the petitioner/accused/mother-in-law of the deceased, submits that the present FIR was registered on the basis of statement made by the father of the deceased. It is submitted that the allegations made in the FIR are false and fabricated. The accused have

nothing to do with the death of the daughter of the complainant. In any event, it is pointed out that immediately upon registration of FIR on 18.1.2020, both the accused being the petitioner and her son, were taken into custody on 18.01.2020 itself. Thereafter, the petitioner was granted regular bail by the learned trial Court vide order dated 29.11.2021 (Annexure P1). It is submitted that upon returning home the petitioner found the mobile phone in which she heard a conversation between her son and his father-in-law/father of the deceased/complainant, in which it is admitted that there was no demand of dowry or harassment caused to the deceased at the hands of the petitioner or her son. It is submitted that accordingly the petitioner immediately filed the present application under Section 311 Cr.P.C. (Annexure P3) for recalling of the complainant/PW8 for his re-examination. However, vide the impugned order dated 14.03.2022 (Annexure P5), the said application of the petitioner has been dismissed.

3. Learned counsel contends that the said application of the petitioner has been dismissed solely on the ground that during the examination of the complainant as PW8, no suggestion was put to the said witness regarding the alleged conversation by the defence counsel. Learned counsel submits that the same is not sufficient ground for dismissal of the petitioner's application as admittedly the said telephonic conversation between the co-accused son of the petitioner and the complainant came to light/knowledge of the petitioner only after her release from the custody. However, the said fact has not been taken into consideration by the learned trial Court while passing the impugned order. It is accordingly

prayed that the present petition be allowed and the impugned order be set aside.

4. Learned counsel for the respondent No.2/complainant opposes the prayer made on behalf of the petitioner and submits that in the present case, the complainant already stood examined as PW8 on 01.11.2021. As such, trial was at advance stage. Sufficient opportunity had been granted to the defence counsel for examination of the complainant. Moreover, the present application under Section 311 Cr.P.C. was filed by the petitioner only to delay the proceedings. It is accordingly prayed that the present petition be dismissed.

5. No other argument is made on behalf of the parties.

6. I have heard learned counsel for the parties and perused the case file in great detail.

7. Perusal of record of the case shows that the son of the petitioner namely Nishu was married to the daughter of the complainant on 08.12.2019. The husband of the petitioner had already expired by then. As such, the petitioner and her son are the only two family members. On 22.12.2019, the deceased had gone to her parental home as her mother was stated to be seriously ill. About a week thereafter, Nishu went to bring the deceased back to the matrimonial home who came back half-heartedly. Thereafter on 17.01.2020, the deceased committed suicide by hanging herself in her matrimonial home after bolting the door of the room from inside. Undisputedly it has come in investigation that the police had found the room bolted from inside. Door of the room was broken down by the

police to enter. Then the body of the deceased was taken down by the police only. It has further come on record that in this regard DDR No.22 dated 17.01.2020 was entered at 9:30 pm at Police Post Dinodgate, Bhiwani in which it is mentioned that the parents of the deceased were informed in this regard. However, no complaint was made by them on 17.01.2020. As per the record, the complaint was made only on 18.01.2020 at about 11:30 am i.e. after more than 14 hours of the incident. It is also undisputed that the petitioner and her co-accused son were taken into custody on 18.01.2020 itself, pending investigation; whereafter, the petitioner was released on regular bail vide order dated 29.11.2021 passed by the learned Additional Sessions Judge, Bhiwani (Annexure P1).

8. It is the contention of the petitioner that after release, the petitioner traced the mobile phone as the same could not be found by the relatives in the absence of petitioner and her son, who is still in custody. The petitioner, having heard the conversation, informed her counsel about the recorded conversation between her son Nishu and his father-in-law Hargovind/complainant/PW8. It is in this background that the petitioner filed an application under Section 311 Cr.P.C. on 17.02.2022 (Annexure P3) seeking recalling of the complainant and one other witness namely Sunita/mother of the deceased, for re-examination as the same was essential for the just and proper decision of the case. A reply dated 23.02.2022 (Annexure P4) was filed by the prosecution to the said application. It has been contended that the conversation would prove that there was no demand of dowry or harassment caused to the deceased at

the hands of the petitioner or her son; and the petitioner and her son have been implicated in a false case. As such, the re-examination of the complainant is necessary for the proper adjudication of the matter.

9. I find merit in the submissions made on behalf of the petitioner. Besides, the fact that the alleged conversation is material to the issue at hand, it is also relevant to note that the complainant had been examined as PW8 by the prosecution only on 01.11.2021 (Annexure P2). Admittedly, at the same time, the petitioner and her son Nishu were in custody, when the mobile phone was not traceable. As such, the call recording and contents thereof were not known to the petitioner, and resultantly could not be put to the witness-complainant.

10. Perusal of the impugned order dated 14.03.2022 (Annexure P5) shows that the only ground given by the learned Additional Sessions Judge while dismissing the said application of the petitioner is that *"In the present case Hargovind was examined as PW8 on 01.11.2021 whereas Sunita was examined as PW11 on 29.11.2021. These Pws were cross-examined at length by learned defence counsel. No suggestions to these witnesses regarding the alleged conversations were put by learned defence counsel. Present application has filed when case was fixed for recording statement of accused Santosh under Section 313 Cr.P.C., which shows that present application has filed just to delay the proceedings. ...."*

However, the above said reasoning of the learned trial court is erroneous for the reasons noted above i.e. the conversation between the complainant and the son of the petitioner came to the knowledge of the petitioner only

upon her release from Jail on 29.11.2021. As such, at the time of examination of the prosecution witnesses PW8/complainant and PW 11/mother of the deceased, no suggestions could be put to them qua the said conversation.

11. While passing the impugned order, the learned trial Court has failed to take into consideration the fact that as is evident from the zimni order dated 01.11.2021 (Annexure P2), the complainant himself had appeared for examination only on 01.11.2021 itself on which date the petitioner and her son were in custody. Thus, the complainant was made available for examination before the learned trial Court after more than 1 year and 9 months of the arrest of the petitioner and her son. Admittedly even the mother of the deceased namely Sunita was examined on 29.11.2021 (Annexure P6); whereafter, prosecution evidence was closed on 08.02.2022 (Annexure P7). Admittedly too, the petitioner had filed the application (Annexure P3) on 17.02.2022 without any delay after this fact came to her notice. Thus, the argument of learned counsel for the complainant that the said application was filed merely to delay the trial, is not made out. In any event, it is not clear as to how delay in trial would positively benefit the petitioner side.

12. Furthermore, it is very relevant that it is the case of the petitioner that the whole case of the defence is that the conversation between the complainant and Nishu recorded in the mobile phone would prove the innocence of the petitioner and her son. As such, the same is very essential and relevant for the just adjudication of the case.

13. It has also been observed by the learned trial Court that although the prosecution witnesses i.e. the complainant and the mother of the deceased have been cross-examined at length yet, there was not even a suggestion given to the said witnesses regarding the alleged conversation. The said reasoning of the learned trial Court is liable to be rejected in view of the fact that it is the consistent case of the petitioner/accused that the mobile phone was traced by the petitioner only after her release on regular bail i.e. on 29.11.2021; whereas both the above said witnesses already stood examined prior to that on 01.11.2021 and 29.11.2021 itself. As such, there was no occasion for the defence to give any suggestion in this regard. As such, there was no opportunity to the defence to prove the said conversation or to confront the prosecution with the contents of the conversation without asking the witnesses as to whether the said conversation had taken place between him and Nishu. Clearly therefore, the said conversation has a great bearing on the issue at hand.

14. Besides the above noted factual aspect, it is also necessary to consider the legal aspect of the matter. Section 311 CRPC reads as follows:

***“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 reexamine any person already examined; and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.”

15. A bare reading of the above provision shows that a wide amplitude of power has been conferred upon the Court in order to ensure justice between the parties. Needless to say, such a wide power has to be exercised with the utmost caution; with the only consideration while exercising this power being that *'if his evidence appears to it to be essential to the just decision of the case.'* It is for this reason that the Hon'ble Supreme Court in **"Rajaram Prasad Yadav Vs. State of Bihar & Another"** Law Finder Doc ID # 461433, has held as follows: -

*"14. A conspicuous reading of Section 311 Criminal Procedure Code 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 Criminal Procedure Code 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 Criminal Procedure Code. It is,*

*therefore, imperative that the invocation of Section 311 Criminal Procedure Code 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". (Emphasis supplied).*

16. Again, the Hon'ble Supreme Court in "**Varsha Garg Vs. The State of Madhya Pradesh & Others**" Law Finder Doc ID # 2022122, in Para 28 has held as under:-

*"28. Having clarified that the bar under Section 301 is inapplicable and that the appellant is well placed to pursue this appeal, we now examine section 311 of CrPC, 1973. Section 311 provides that the Court "may":*

- (i) Summon any person as a witness or to examine any person in attendance, though not summoned as a witness; and*

(ii) *Recall and re-examine any person who has already been examined.*

*This power can be exercised at any stage of any inquiry, trial or other proceeding under the CrPC. The latter part of Section 311 states that the Court 'shall' summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case". Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.".*

(Emphasis added)

17. As already noticed above, this power has to be exercised with the greatest circumspection. The Hon'ble Supreme Court in "**Swapan Kumar Chatterjee Vs. Central Bureau of Investigation**" Law Finder Doc ID # **1364136**, has held that: -

*"B. Criminal Procedure Code, 1973 Section 311 Power should be invoked by court only to meet ends of justice - Power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection - Court has vide power under Section 311 to even recall witnesses for reexamination or further examination, necessary in interest of justice, but same has to be exercised after taking into consideration facts and circumstances of each case - Power under provision shall not be exercised if court is of the view that application has been filed as abuse of process of law."*

18. This Court in "**Gurinder Singh Vs. State of Punjab**" Law finder Doc ID # **2583486**, has held as under:-

*"7. In the present circumstance, it is imperative to examine Section 311 Cr.P.C. The text of the said Section is provided below for reference:-*

*'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 reexamine any person already examined; and the Court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.'*

*8. A two Judge Bench of the Hon'ble Supreme Court in **V.N. Palil v. K Niranjan, 2021 (2) RCR (Criminal) 310**, examined the scope of the power under Section 311 of Cr.P.C and speaking through justice Ajay Rastogi, the following was observed:*

*"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 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 significant expression that occurs is 'at any stage of enquiry or trial or other proceeding under this Code'. It is however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said wider the power, greater is the necessity of caution while exercise of judicious discretion."*

*9. The Hon'ble Supreme Court in **Mohanlal ShamjiSoni v. Union of India and another, AIR 1991 SC 1346** has held that where the object of the accused in recalling witnesses already examined in the case is to prolong the trial of the case, the Court would not allow such application. Moreover, the power*

*under Section 311 of Cr.P.C is dictated by exigency of the situation based on the principle of fair play and goodwill and existence of the evidence being essential for the just adjudication of the case is the only guiding factor and that only the ends of justice requires the examination of any person which would depend to the facts and circumstances of each case. It was further held that it is obligatory on the part of the court to summon the witness in case his evidence appears to be essential for just decision of the case. Such power may be exercised at any stage. However, the power is circumscribed by the principle underlying the section, that is, the evidence to be obtained must be essential for just decision of the case.”*

(Emphasis added)

19.                   However, as already demonstrated above, the conversation sought to be produced by the petitioner has great material relevance to the just and fair adjudication of the present case.

20.                   In view of the above, present petition and the application dated 17.02.2022 (Annexure P3) are **allowed**. The impugned order dated 14.03.2022 (Annexure P5) passed by the learned Additional Sessions Judge, Bhiwani is set aside.

21.                   Pending application(s) if any shall also stand(s) disposed of.

02.12.2024  
Sunena

(Nidhi Gupta)  
Judge

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable        | Yes/No |