

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-663-2024 (O&M)
Date of Decision: 15.04.2024

Harish	VS.	... Petitioner
State of Haryana		... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Neeraj Goel, Advocate for the petitioner

Sandeep Moudgil, J.

(1). This petition under Section 401 CrPC has been filed by the petitioner seeking to quash the order dated 16.03.2024 passed by ASJ, Sonapat in SC. No.305/2020 arising out of FIR No.368 dated 26.08.2020 under Sections 302/34 IPC and Section 25/27 Arms Act, registered at Police Station Ganaur, Sonapat whereby the application under Section 311 CrPC seeking permission to re-examine PW5 Rakesh and PW6 Anil @ Ashu has been dismissed with a further direction to grant appropriate opportunity to re-examine the said witnesses.

(2). Learned counsel for the petitioner submits that he moved an application stating therein that PW5 Rakesh and PW6 Anil @ Ashu were examined-in-chief on 04.04.2022 and both witnesses were cross-examined on 27.05.2022 by defense counsel and at the time of examination-in-chief both the witnesses deposed that after shooting deceased Nitik, petitioner is alleged to have fled away from the spot, however, on 08.01.2024 the IO has been cross-examined, wherein Ex.D1 to Ex.D6 were shown to him and he admitted that the petitioner was present at Nidaan Hospital on the day of incident.

(3). It is argued that in the present case, new facts came on record during cross-examination of IO, however, the trial court dismissed the

application of the petitioner merely on the ground that even without re-examining the private witnesses, effective decision can be passed by the Court taking into consideration the cross-examination of the eye-witness in view of the photographs which the petitioner wants to place on record which is necessitated for the just trial and decision of the case and therefore, he filed the present application to recall PW5 and PW6 for further cross-examination.

(4). Heard learned counsel for the petitioner.

(5). It is well settled that the exercise of power under Section 311 CrPC should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, as it is the primary duty of a criminal court to ascertain whether calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the court to arrive at a just decision of the case is being (mis)used as a tool for filling up the lacuna in the prosecution case which can only be allowed by the Court 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. 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. Exercise of such a widest power invested with the Court should be made judicially and also with extreme care and caution. This view of mine is reinforced by the decision of the Apex Court in **U.T. of Dadra & Nagar Haveli and another v. Fatehsinh Mohansinh Chauhan, (2006) 7 SCC 529,** the relevant portion is extracted as under:-

“12. A conspectus of authorities referred to above would show that the principle is well settled that 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 of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or re-examining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in 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.”

(6). In the present case, PW5 Rakesh and PW6-Anil @ Ashu were admittedly examined on 04.04.2022 and 27.05.2022. On an earlier occasion also, application under Section 311 of CrPC moved on the ground of change of counsel, was dismissed vide order dated 17.09.2022 followed by the present application making similar request on the ground that in the cross-examination of IO on 08.01.2024, some contrary version has surfaced and therefore, their further cross-examination is necessary. The trial court has rightly observed that allowing such applications under Section 311 of CrPC would be no end to the litigation.

(7). The possible contradiction erupting due to contrary version which as per petitioner has surfaced during the cross-examination of the Investigating Officer may be a valid argument on merits but the same cannot form the basis for allowing the application under Section 311 CrPC to call the witness for further cross-examination. It needs no elaboration that if the evidence of the witness is necessary for reaching at a just decision of the case then the parties

can seek summoning/examining the witness. However, in the present case, it is not that without calling PW5 and PW6 for further cross-examination the case cannot be effectively decided.

(8). It is well settled that the exercise of the power of recalling the witness for cross-examination cannot be dubbed as filling in 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. The power under Section 311, CrPC must necessarily be invoked 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. Therefore, the order dated 16.03.2024 passed by the trial court in rejecting the application under Section 311 CrPC seeking permission to re-examine PW5 Rakesh and PW6 Anil @ Ashu is in tune with the guidelines issued by the Supreme Court in **Rajaram Prasad Yadav vs. State of Bihar & Anr. (2013) 14 SCC 461** and thus cannot be fiddled away.

(9). In view of the above discussion and the case-laws cited supra, the present petition is dismissed being devoid of any merit.

15.04.2024
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No