

CRM-M-30462-2016
Date of Decision : 09-04-2024

Raj Singh

.....Petitioner

Versus

State of Haryana and ors

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- None for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

Mr. Parmod Kumar Parmar, Advocate
for respondent Nos.2 to 4.

PANKAJ JAIN, J. (Oral)

1. Present petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 08.08.2016 (Annexure P/7) passed by Revisional Court dismissing the revision preferred by the petitioner affirming order dated 17.03.2016 (Annexure P/5) and order dated 10.03.2016 (Annexure P/3) passed by Judicial Magistrate, 1st Class, Jhajjar dismissing the application filed by the complainant under Section 311 Cr.P.C.

2. At the behest of the petitioner, FIR bearing No.472 dated 26.08.2010 was registered for the offences punishable under Sections 323, 326 and 506 read with Section 34 of IPC.

3. In order to prove the injuries, prosecution sought repeated adjournments to secure presence of the doctors who radio-diagnosed the victim. After the evidence of the prosecution was closed, complainant moved the present application under Section 311 Cr.P.C. seeking permission to examine those doctors by way of additional evidence. Trial Court dismissed the application vide order dated 17.03.2016 holding that despite repeated opportunities, prosecution has not been able to examine the witness and thus at the stage when the trial is almost concluded, there was no reason allow the application.

4. The petitioner/complainant preferred revision which also stands dismissed by the order observing as under:-

“Upon this, the record of lower court was gone through. It is made out that the prosecution had already availed a total number of 23 effective opportunities, by the date of passing the impugned order i.e. 10.03.2016, when the evidence of prosecution was closed. It is also made out that for six consecutive opportunities till dated 10.03.2016, summons were repeatedly issued for the above two doctors, yet there was no success at the hands of the prosecution. Even today, the revisionist is not sure of the exact place of posting of these doctors or does not allege that the said witnesses have colluded with the accused and are not appearing despite their original addresses subsisting as such, till date. In these circumstances, when the prosecution had already availed more than sufficient number of effective opportunities to conclude its evidence and even the Trial Court had made its best efforts to secure the presence of the above witnesses, this Court does not find any patent

illegality or gross irregularly in the posting of Order dated 10.03.2016, which is the scope of powers of a Revisionist jurisdiction.”

5. I have gone through the record of the case and have heard counsel for the respondent.

6. Reference may be made to law laid down by the Apex Court in ***Mohanlal Shamji Soni vs. Union of India 1991 Supp. (1) SCC 271*** and followed in the case of ***Rajaram Prasad Yadav vs. State of Bihar and another 2013(14) SCC 461***, wherein Apex Court has laid down principles for invoking Section 311 Cr.P.C. observing as under:-

“xxxx xxxx xxxx xxxx

23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Cr.P.C. read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and

examine or recall and re-examine any such person.

d) 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 for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said 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, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind

that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Cr.P.C. must therefore, be invoked by the Court 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. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the

society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.

xxxx xxxx xxxx xxxx”

7. This stage is not relevant for deciding application under Section 311 of Cr.P.C. Rather the Court is required to test the prayer on the touchstone of the relevance of the evidence which is sought to be produced by resorting to Section 311 of Cr.P.C.

8. In the present case, it has come on record that the doctors who radio-diagnosed the victim could not be examined and at the same time it is evident from the record which further reveals that for that purpose repeated opportunities have been granted which were taken on record.

9. In order to strike balance between the rights of the accused to plead trial as well as the right of the prosecution for fair opportunity, the present petition is disposed off with direction to the trial Court to afford one opportunity to the complainant/prosecution to examine the witnesses as disclosed in Section 311 of Cr.P.C.

10. Further keeping in view that the present petition is pending before this Court for the last eight years, trial Court is directed to conclude the trial expeditiously as possible.

11. It is clarified that the prosecution/complainant shall be granted only one opportunity to examine the witnesses and in case they

fail to examine, impugned order dated 17.03.2016 whereby application
filed by the petitioner was rejected shall come into force.

09-04-2024
spn

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable : No