

202

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-699-2024 (O&M)
Date of decision: 25.07.2024

Sunny Sahota

...Petitioner

Versus

State of Punjab

...Respondent

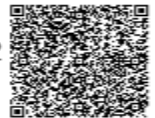
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. G.S. Bajwa, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 19.03.2024 passed by learned Additional Sessions Judge, Amritsar, vide which application under Section 311 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') filed by the complainant, supported by the State, in case arising out of FIR No.42 dated 28.02.2021 under Sections 379-B, 354, 452, 323, 506, 148, 149 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Gate Hakima, District Amritsar, was allowed.



2. Briefly, facts of the case are that FIR (*supra*) was registered on the basis of complaint filed by Surinder Kaur with the allegations that she has four children; one daughter and three sons and all are married and they are residing separately. She was residing with her son Manpreet Singh, who is working as driver. He took loan of Rs.15,000/- on 10% interest from the petitioner, who pretend himself as Press Reporter. After the loan amount was returned and asked to return the blank cheques, the petitioner demanded total amount of Rs.85,000/- including interest and thereafter, he would return the cheques. On 27.02.2021 at about 09.30 p.m., the petitioner along with Jagtar Singh and 2-3 unknown persons forcibly entered into their house and started abusing them. He demanded the loan amount. The son of the complainant said that he had already repaid the same and requested to return the cheques. On this, Jagtar Singh snatched the key of Aactiva bearing registration No.PB-02-EA-5527 and forcibly took the same in battery rickshaw with them. Jagtar Singh also gave beatings to the complainant, her son and her daughter-in-law. The accused persons threatened that they will harm them.

3. Learned counsel for the petitioner, *inter alia*, contends that application under Section 311 Cr.P.C. was allowed, even without determining whether such material can be brought on record on the *ipse dixit* of the complainant. The CCTV footage was never taken into possession by the Investigating Officer during course of the investigation and the prosecution can only rely upon those documents, which were made part of the final report



under Section 173 Cr.P.C. and the provisions contained in Section 207 Cr.P.C. are mandatory in nature. The sanctity of aforementioned provision is clearly violated, as legislative intention behind provisions contained in Section 207 Cr.P.C. is to provide an opportunity to the accused to set up his defence on the basis of material being relied upon by the prosecution against him. Any fresh material can be brought on record either by filing a supplementary chargesheet under Section 173(8) Cr.P.C. or by the Court itself by invoking the provisions of Section 165 of the Indian Evidence Act, 1872 (for short 'Act of 1972') and it is more significant to note that even till date, the prosecution has neither relied upon such CCTV footage nor produced the same by any method contemplated in Cr.P.C. It is further contended that the procedure adopted by learned trial Court is totally alien to the established practice and procedure. The certificate issued under Section 65-B of I.T. Act is of no value, as no such person was cited as a witness in the list of witnesses. Learned Court below fell in grave error, while allowing the application under Section 311 Cr.P.C. and it will cause great prejudice to the petitioner.

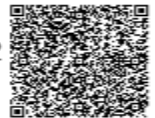
4. Learned counsel for the petitioner further contends that no prejudice would be caused to the complainant in case the present petition is allowed, as she would have the opportunity to rebut the same. Learned counsel for the petitioner relies upon the judgment of this Court passed in ***Surjit Singh Vs. State of Punjab and others, CRM-M-42890-2022***, decided on 26.05.2023 and ***Khushwinder Singh and another Vs. State of Punjab, 2007 (1) R.C.R.***

***(Criminal) 531.***

5. Learned State counsel has supported the impugned order passed by learned trial Court, by contending that all aspects of the matter have been considered and thereafter, rightly allowed the application under Section 311 Cr.P.C.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the CCTV footage was never taken into possession by the Investigating Officer during course of the investigation and the prosecution can only rely upon those documents, which were made part of the final report under Section 173 Cr.P.C. The sanctity of provisions contained in Section 207 Cr.P.C. is clearly violated, as legislative intention behind that provisions is to provide an opportunity to the accused to set up his defence on the basis of material being relied upon by the prosecution against him. Any fresh material can be brought on record either by filing a supplementary chargesheet under Section 173(8) Cr.P.C. or by the Court itself by invoking the provisions of Section 165 of the Act of 1972. A perusal of the record reveals that till date, the prosecution has neither relied upon such CCTV footage nor produced the same by any method contemplated in Cr.P.C. The certificate issued under Section 65-B of I.T. Act is of no value, as no such person was cited as a witness in the list of witnesses.

7. It is a settled position of law that the power under Section 311 of Cr.P.C. cannot be invoked in a routine manner but the same has to be



exercised in exceptional cases, where the Court feels that the re-examination of a witness/additional evidence is essential for the just decision of the case.

8. 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 re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.’

9. A two Judge Bench of the Hon’ble Supreme Court in ***V. N. Patil Vs. K. Niranjana, 2021 (2) R.C.R. (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.”

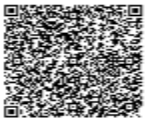
10. The Hon’ble Supreme Court in ***Mohanlal Shamji Soni Vs. Union of India and another, AIR 1991 SC 1346*** has held that where the



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.

11. A Division Bench of this Court in ***Sukhdev Singh Vs. State of Punjab, 1982 Cr. LJ 2201*** has held as under:

“The discretion is required to be exercised by the Court keeping in view the just decision of the case unmindful of the fact whether any party before it gains or losses from the exercise of such discretion under this section. There is no doubt that object of the section is not to enable any one or the other party to fill up the gaps of its case. The section is not to be used to enable it to repair the lacuna. The sole criterion in such a case should be whether the exercise of power under section is necessary in the interest of justice. While exercising this discretion the court has to keep in its mind the well-known principle of law that the order should not operate as a rebuttal of the case set up by the defence after the prosecution case is closed. The use of this section cannot be limited only to something arising eximporviso which no human



agency could see. The mere fact that evidence is permitted to be taken after the entire prosecution case is over is in itself in excess of the powers of the Court. No hard and fast rules can be prescribed as to when and at what stage this discretion should be exercised. The anxiety for justice is paramount and should be kept in view. The Court should be unmindful of the fact of the use of the discretion in favour or against any party. The principle that such evidence should not demolish the case set up by the accused in his defence, if he has done so should be present in the mind of the judge at the time when he takes a decision. The powers of the Court under Section 311 which are very wide cannot be limited. The discretion can be exercised by the Court at any stage of the case, but on justifiable grounds". (emphasis added)."

11. In view of the law settled by the Hon’ble Supreme Court in the cases referred to above, present revision petition is allowed and the impugned order dated 19.03.2024 passed by learned Additional Sessions Judge, Amritsar, allowing the application under Section 311 Cr.P.C. filed by the complainant, is hereby set aside.

[HARPREET SINGH BRAR]
JUDGE

25.07.2024
vishnu

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No