

CRM-M-18435-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-18435-2024

Date of decision: 10.05.2024

Satnam Singh

....Petitioner

V/s

State of Punjab and another

....Respondents

CORAM: HON’BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Armaan Gagneja, Advocate for the petitioner.
Mr. Adhiraj Singh Thind, AAG Punjab.
Mr. A.K. Khunger, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 laying challenge to the order dated 27.03.2024 passed by Special Judge, Sri Muktsar Sahib whereby application; filed by the State, under Section 311 of Code of Criminal Procedure, 1973 (hereinafter to be referred as the ‘Cr.P.C.’), for re-calling two witnesses i.e. PW-1 (victim) and PW-3 (Shaminder Kumar) for further re-examination, has been allowed.
2. Learned counsel for the petitioner has argued that the aforesaid two witnesses have already been examined by the prosecution in detail and have also been cross-examined by the defence. Moreover, the said witnesses have been recalled in a mechanical manner in order to fill up the lacuna and plugging the loopholes which would be detrimental to the case of the accused-petitioner. According to learned counsel, the Court below has erred in allowing the present application just to delay the trial. Learned counsel has further argued that the powers under Section 311 of Cr.P.C. have to be

exercised sparingly and cautiously and not arbitrarily. However, the Court

below, vide impugned order, has allowed the application without recording any reason which is against the basic tenets of law and hence the learned trial court ought to have dismissed the said application. According to the learned counsel, the impugned order is based on surmises and conjectures and the learned trial Court ought to have dismissed the said application. Thus, the impugned order is liable to be set-aside.

3. Learned counsel for the State has vehemently opposed the present petition by arguing that certain relevant facts were left inadvertently by prosecution during examination of PW-1 and PW-3 which have material bearing on the fate of the case. Learned State counsel seeks to place on record reply by way of affidavit of Satnam Singh, Deputy Superintendent of Police, Sub Division Sri Muktsar Sahib in Court; relevant whereof reads as under:

7. That during trial on 05-01-2024 prosecution has examined victim as PW1 and material witness Shaminder Kumar was examined as PW3 on 07-02-2024. However, during examination both the witness PW-1 and PW-3 did not disclose about the factum of extra judicial confession suffered by accused in front of PW-3 and that the accused were identified by PW-1 at her house. Thus the Addl. Public Prosecutor moved an application u/s 311 Cr.P.C dated 06-3-2024 and sought further examination of material witness PW-1 and Pw-3 so that both the witness could be examined with regard to the facts which is material for the proper adjudication of the case. The Ld. Trial Court considered that material sought to be proved by prosecution, is very much relevant and essential for the just decision of the case and thus vide order dated: 27-3-2024 has allowed the application of prosecution by exercising its judicial discretion.”

According to him, the impugned order suffers from no infirmity or illegality and warrants no interference at this stage. It has been argued that present petition has been filed with oblique motive to circumvent the trial of the case with the purpose to delay the proceedings.

4. Learned counsel appearing for respondent No.2 has also opposed the instant petition by arguing that Section 311 of Cr.P.C. confers a very wide power on the Court to summon any person as a witness or to recall and re-examine any person already examined at any stage of any inquiry, trial or other proceeding and further the Section casts a duty upon the Court to summon and examine or recall and re-examine any such person, if his evidence appears to be essential to the just decision of the case. It has been further argued that sufficient ground have been mentioned in the application for recalling aforesaid witnesses for further re-examination. Therefore, dismissal of the instant petition is prayed for.

5. I have heard learned counsel for the rival parties and perused the paper-book.

6. It would be apposite to refer herein to a judgment passed by this Court in ***Karamjit Singh vs. State of Punjab and another, Neutral Citation No. 2024:PHHC:024178***; relevant whereof reads as under:

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.

(v) *A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.*

(vi) *Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.*

(II) *No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances. It is neither possible nor pragmatic to lay down any such exhaustive guide-lines as every case is sui generis in terms of factual conspectus.*

(III) *Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”*

7. The impugned order arises from a trial being undertaken against the petitioner (herein) in FIR No.297 dated 21.11.2021 for offences under Sections 304, 354-A, 354-D of IPC and Section 8 of POCSO Act at Police Station City, Sri Muktsar Sahib on the statement of complainant-victim (respondent No.2 herein). During investigation, statements of material witnesses were recorded and name of the petitioner surfaced and he was nominated as an accused vide DDR No.36 dated 22.11.2021. Investigation *qua* the petitioner was completed on 17.02.2022 and report under Section 173 Cr.P.C. was presented before the competent court of jurisdiction. During the course of trial, the prosecution had examined the victim and material witness namely Shaminder Kumar as PW-1 and PW-3 respectively. However, during their examination, both the witnesses did not disclose about the factum of extra judicial confession suffered by the accused in front of them. Thereafter, on 06.03.2024, the instant application under Section 311

for further re-examination of PW-1 (victim) and PW-3 (Shaminder Kumar) on the ground that the said witnesses could not be examined with regard to the facts which were very much necessary for effective and proper adjudication of the case in hand. The said application was opposed by the State and reply thereto was also filed. It is in this factual backdrop, the impugned order dated 27.03.2024 was passed by the learned trial Court.

8. The factual conspectus of the matter in hand reflects that though the prosecution has examined PW-1 (victim) and PW-3 (Shaminder Kumar) and were also cross-examined by the defence yet the aforesaid witness could not be examined with regard to extra judicial confession made by the accused to them. It is axiomatic that Section 311 of the Cr.P.C. is a discretionary power vested in Court which has to be exercised judiciously for strong and valid reasons and with caution and circumspection to meets the ends of justice. By way of the application in question, the further re-examination of PW-1 and PW-3 was sought for. This aspect assumes more importance in the present case as the witnesses who are sought to be further re-examined are prime prosecution witnesses, being victim as also FIR-complainant and material witness. By way of impugned order, the learned trial Court has allowed the application in question by holding that in order to meet the ends of justice, it is necessary to summon the aforesaid witnesses for re-examination. Moreover, the petitioner-accused, when witnesses have been further examined in terms of the impugned order, will have a right to cross-examine them. Accordingly, at this stage, it cannot be said that no prejudice would be caused to the petitioner-accused. It 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 which lead to a just and correct decision 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 up lacuna in prosecution case.

9. Consequently, the present petition is dismissed & the impugned order dated 27.03.2024 passed by Special Court, Sri Muktsar Sahib, Punjab allowing the application under Section 311 Cr.P.C., 1973 filed by prosecution is upheld.

10. Needless to state herein that nothing said hereinabove shall be construed as an expression of opinion on the merits of the case.

11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

May 10, 2024
Ajay

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