



CRM-M-18422-2024

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**281 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-18422-2024

Date of Decision: 22.08.2024

Karan Aggarwal

..... Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Saurabh Arora, Advocate for the petitioner.

Mr. J. S. Arora, DAG, Punjab.

Ms. G.K. Mann, Sr. Advocate with
Mr. Anmol Jeevan Singh Gill, Advocate, for
respondent No.2.**Rajesh Bhardwaj, J.**

1. Prayer in the present petition is for quashing of impugned order dated 17.11.2023 (Annexure P-9) passed by learned JMIC, Ludhiana whereby application filed by the petitioner under Section 311 Cr.P.C. seeking permission to examine the witness has been dismissed and order dated 21.03.2024 (Annexure P-11) passed by learned Additional Sessions Judge, Ludhiana, whereby, revision filed against order dated 17.11.2023 has been dismissed.

2. Succinctly, facts of the case are that the petitioner is the author/complainant of the FIR No.49 dated 04.03.2015, under Sections 419/465/468/471/120-B IPC at Police Station Sarabha Nagar, Ludhiana City lodged against respondent No.2-Jagjit Singh on allegations that respondent No.2 had committed forgery in getting new passport issued in his name. On the registration of the FIR, investigation commenced and challan was presented by the Investigating Officer and thereafter, trial commenced.



However, the petitioner filed application under Section 311 Cr.P.C. on 18.10.2023 praying for summoning the witness from the office of the passport authority, which was declined by learned JMIC, Ludhiana vide its impugned order dated 17.11.2023. Aggrieved by the same, the petitioner filed revision petition before learned Additional Sessions Judge, Ludhiana, but the same also met the same fate as it was declined by learned Additional Sessions Judge vide impugned order dated 21.03.2024. Hence, aggrieved by the same, the petitioner has approached this Court impugning both these orders dated 17.11.2023 and 21.03.2024 by way of filing the present petition.

3. Learned counsel for the petitioner has submitted that the impugned orders passed are totally unsustainable in the eyes of law and thus, deserves to be set aside. It has been submitted that at Sr. No.8 of the list of the witnesses, name of Shri Narain from the office of Regional Passport Office, Chandigarh was mentioned to prove the report of the passport. He submits that application filed by the petitioner under Section 311 Cr.P.C. was illegally dismissed by learned JMIC, Ludhiana vide impugned order dated 17.11.2023. It is submitted that revision petition assailing this order was also illegally dismissed by learned Additional Sessions Judge, Ludhiana vide order dated 21.03.2024. He submits that the petitioner sought to examine material witness by way of filing application under Section 311 Cr.P.C. He submits that PW-2 Satpal, Clerk from the Regional Passport Office, Jalandhar was examined on 17.02.2020, however, Shri Narain from Regional Passport Office, Chandigarh was not examined. He submits that due to non-examination of this witness, great prejudice will be caused to the



petitioner. He further submits that both the Courts have misinterpreted the provisions of Section 311 Cr.P.C. He has relied upon the judgment of Hon'ble Supreme Court in case of Godrej Pecific Tech. Ltd. vs. Computer Joint India Ltd. 2008 (11) SCC 108. He thus submits that power under Section 311 Cr.P.C. can be invoked by the Court at any stage of the trial, if the evidence of the witness is essential for the just decision of the case, however, both the Court have failed to appreciate the same and thus, the impugned orders being unsustainable in the eyes of law, deserves to be set aside.

4. Per contra, learned Senior Counsel for respondent No.2 has opposed the submissions made by counsel for the petitioner. She has submitted that respondent No.2 is facing ordeal of trial from the last nine years. She has submitted that the petitioner filed application under Section 311 Cr.P.C. only to prolong the agony of respondent No.2. She submits that this is not the first application filed under Section 311 Cr.P.C., but the second application filed by the petitioner, as the earlier application was allowed by learned trial Court vide order dated 28.08.2023. She submits that the petitioner intentionally did not mention the name of the witness sought to be summoned by the present application. She has submitted that the trial is complete and case is listed before the trial Court for the pronouncement of the order tomorrow i.e. 23.08.2024. She further submits that power under Section 311 Cr.P.C. cannot be invoked to fill up the lacunae in the case or to prolong the trial. She has submitted that both the trial Court and Revisional Court have rightly dismissed the application filed by the petitioner as the witness sought to be examined was not found to be essential for just decision



of the case. She thus submits that present petition filed by the petitioner being devoid of any merit, deserves to be dismissed.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is deciphered that the petitioner lodged an FIR against respondent No.2. On completion of the investigation, challan was presented and the trial Court after framing of charges commenced with the examination of the witnesses. The petitioner is none other than the author of the FIR. It is evident from the record of the case that prosecution evidence was closed by the trial Court vide order dated 04.08.2023. Thereafter, the petitioner filed an application under Section 311 Cr.P.C. for the examination of the complainant, which was allowed by the trial Court vide its order dated 28.08.2023. Thereafter, he again filed second application under Section 311 Cr.P.C. on 18.10.2023 for summoning the witness from the office of Passport Authority. Needless to say that in the earlier application filed, the petitioner did not pray for summoning this witness and thus, by way of filing another application prolonged the trial. There is no plausible explanation given by the petitioner for not making prayer for summoning of this witness in the earlier application filed under Section 311 Cr.P.C., which was allowed by the trial Court on 28.08.2023. As is evident from the record, prosecution evidence had already been closed on 04.08.2024. Thus, this application was dismissed by learned JMIC, Ludhiana on 17.11.2023 and the revision petition filed was also dismissed by learned Additional Sessions Judge vide order dated 21.03.2024.

7. There is no gainsaying that the provisions of Section 311



Cr.P.C. are sacrosanct in nature and have been incorporated to secure the ends of justice. For resolving the controversy, appreciation of provisions of Section 311 Cr.P.C. are relevant, which read as under:-

“311. Power to summon material witnesses, 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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. From the bare reading of the provision of Section 311 Cr.P.C., it is apparent that the Court has ample power to re-examine or recall any such person whose evidence appears to be essential to the just decision of the case. However, Hon'ble Supreme Court in the case of **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328** held as under:-

“11. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.”

9. There is no dispute regarding the law settled by Hon'ble Supreme Court time and again that the power granted under Section 311



Cr.P.C. should be exercised in a liberal manner, if the Court finds that evidence of the witness sought to be examined is essential for just decision of the case. However, the same cannot be allowed to be misused for prolonging the trial. The FIR in the present case was lodged in the year 2015 and since then respondent No.2 -accused is facing trial. The petitioner had already exercised this power by filing application under Section 311 Cr.P.C. after closing of the evidence of the prosecution. However, this prayer was not made in the first application filed by the complainant and then for the reasons best known, he filed the second application for summoning the witness from the office of the Passport Authority. As submitted before this Court, the trial is already over and the case is fixed for pronouncement of the order tomorrow i.e. 23.08.2024. Thus, this Court finds no infirmity in the impugned orders passed. The petitioner fails to make out a case, which qualifies on the anvil of the law settled.

10. Resultantly, the present petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

22.08.2024
sharmila

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No