

CRM-M-21577-2023 (O&M)

[1]

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

CRM-M-21577-2023 (O&M)

Reserved on 25.04.2024

Date of decision: 28.05.2024

Kamal

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Ankit Chaudhary, Advocate for
Mr. Keshav Partap Singh, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. This revision petition has been filed by the petitioner against the order dated 31.03.2023 (Annexure P-5) passed by the Court of Additional Sessions Judge, Gurugram vide which an application filed by the petitioner/prosecution under Section 311 Cr.P.C. for summoning an authorized person of N.S. Technologies, Gali No.6/6, Vikas Nagar, Budhpur, Rewari, in a criminal case having FIR No.224 dated 03.06.2018, under Section 279, 304A IPC, Police Station Pataudi, District Gurugram, was dismissed.

2. Brief facts of the case are that first informant Ishwar Singh son of Nanak Ram got recorded his statement with the police, that on 03.06.2018 at about 5:05 AM, he and other persons including Ram Kishan were sitting on a side of the road after completing yoga exercises. In the meantime, Eco car No.HR-76-D-3213 driven by unknown person at very high speed, directly hit Ram Kishan and dragged him to a distance about 10 meters and then the said unknown driver sped away from there. Ram Kishan suffered multiple injuries and his son was informed

CRM-M-21577-2023 (O&M)

[2]

about the said incident and then injured Ram Kishan was taken to hospital where he died while undergoing treatment. Police registered FIR against the aforesaid unknown driver under Section 304A and 279 IPC. The investigating officer conducted the inquest proceedings and after post mortem examination, dead body was handed over to the family members of deceased. On 06.06.2018, Raj Kumar son of deceased gave an application to the police wherein he disclosed that respondent No.2 Sanjeet was driver of the offending vehicle and he also disclosed to the police that on 01.06.2018 said Sanjeet came to their shop and was under the influence of liquor and demanded money and at that time his younger brother Kamal who was present in the shop refused to give any money to respondent No.2 and then respondent No.2 left the shop after extending threat to Kamal to teach him a lesson. Thereafter, supplementary statement of Kamal son of deceased dated 25.08.2018 was recorded along with that of Sumer. The offending car which was registered in name of Hoshiar Singh father of respondent No.2 was surrendered by the owner and it was taken into possession by police on 07.06.2018. During investigation, the petitioner was apprehended and released on bail. On completion of investigation, police presented challan against respondent No.2 under Section 304 (II) IPC.

3. The trial Court framed charges to which accused/respondent No.2 did not plead guilty and then the case was fixed for prosecution evidence. During that proceedings, the petitioner Kamal who is son of the deceased moved an application under Section 311 Cr.P.C. for summoning of the authorized person of N.S. Technologies, in order to establish that on 01.06.2018, when respondent No.2 visited the shop of deceased i.e. Deepak Marbles and gave threat to petitioner Kamal who refused to given any money to respondent No.2 who at that time was under the influence of liquor, no CCTV cameras were installed in or outside the said shop. The said application was dismissed by the trial Court vide impugned

order (Annexure P-5), after hearing both the parties.

4. The counsel for the petitioner submits that during trial, petitioner appeared as PW-2 and in his cross-examination certain photographs marked as Ex.D-3 to Ex.D-6 of his shop were shown to the witness wherein certain CCTV cameras were visible and petitioner while standing in the witness box admitted those photographs. The counsel for the petitioner further submits that actually, the said CCTV cameras were installed inside and outside his shop by PW-2 much after 01.06.2018 i.e. the day when respondent No.2 is stated to have visited the said shop. The counsel for the petitioner has further submitted that the said CCTV cameras which were installed later on were purchased by the petitioner from N.S. Technologies, Rewari and in order to establish the aforesaid fact, it is necessary to examine authorized representative of the said firm/company and accordingly, application under Section 311 Cr.P.C. was filed by the petitioner but the same was wrongly dismissed by the learned trial Court.

5. The present petition is resisted by the counsel for respondent No.2 who submits that application under Section 311 Cr.P.C was filed by the petitioner to fill up the lacuna in the prosecution case as petitioner while appearing in the witness box as PW-2 admitted the photographs marked as Ex.D-3 to Ex.D-6 before the trial Court, wherein CCTV cameras installed inside and outside the shop of the petitioner are clearly visible. Counsel for respondent No.2 has further contended that there is no illegality or perversity in the impugned order (Annexure P-5).

6. I have considered the submissions made by counsel for the parties.

7. Undoubtedly, Section 311 Cr.P.C. grants vide discretionary power to the trial Court to summon, examine, recall or re-examine any person, if his evidence is essential to the just decision of the case. The said provision of law is meant to ensure a just decision. However, with the aid of Section 311 Cr.P.C., party cannot be permitted to fill gaps in its case. The Court's power under Section

311 Cr.P.C. must be exercised cautiously and judiciously to meet the ends of justice.

8. It is not clear as to whether the aforesaid photographs which were marked as Ex.D-3 to Ex.D-6 before the trial Court were clicked before or after 01.06.2018 i.e. the date on which respondent No.2 is stated to have visited shop of petitioner and extended threats to him.

9. As has been rightly observed by the trial Court, the concerned bill dated 06.04.2019 which the petitioner intends to produce by invoking provision of Section 311 Cr.P.C. may be regarding purchase of some other additional CCTV cameras installed after the registration of FIR in the present case.

10. The afore-stated photographs were admitted by the petitioner in his cross-examination which was conducted on 03.03.2020. On that date, no request was made by the Public Prosecutor or on behalf of the petitioner seeking re-examination of the witness to clarify aforesaid ambiguity with regard to photographs marked as Ex.D-3 to Ex.D-6 during trial. The petitioner filed aforesaid application under Section 311 Cr.P.C. on 10.03.2023 when prosecution has already examined 15 witnesses. Further, PW-15 ASI Ajit Kumar, Investigating Officer while appearing in the witness box clearly stated that he did not obtain footage dated 01.06.2018 of CCTV camera installed in the shop of petitioner. Furthermore, FIR is silent regarding any visit of respondent No.2 dated 01.06.2018 to the shop of the petitioner and this fact was disclosed to the police for the first time on 06.06.2018 and that too not by petitioner but by his brother Raj Kumar.

11. In the light of above discussion, this Court is of the view that production of bill/invoice dated 06.04.2019 issued by N.S. Technologies, Rewari with regard to installation of CCTV camera's in shop of the petitioner, by way of additional evidence is not going to improve the case of the prosecution. Further, it appears that the application under Section 311 Cr.P.C. is filed by the petitioner to

CRM-M-21577-2023 (O&M) [5]

counter the admission already made by the petitioner while appearing in the witness box as PW-2, whereby he admitted the correctness of photographs marked as Ex.D-3 to Ex.D-6 in the trial Court proceedings wherein certain CCTV camera’s are clearly visible being installed in shop of the petitioner.

12. For the foregoing reasons, no ground is made out to interfere in the impugned order passed by the trial Court.

13. Consequently, the present petition is dismissed. The observations made herein above are not to be construed as an expression of opinion on the merits of the case.

14. Pending application(s), if any, stand disposed of.

28.05.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

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