



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

126

CRM-M No.23298 of 2024
Date of Decision: 28.08.2024

Sukhchain Singh ... Petitioner

Versus

State of Punjab ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ashok Giri, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking quashing of order dated 24.04.2024 passed by the Court of learned Additional Sessions Judge, Jalandhar in case bearing CIS No.NDPS/201/2021 titled as *State of Punjab v. Sukhchain Singh and another* arising out of FIR No.13 dated 20.01.2021 registered under Section 21 (c) of Narcotic Drugs and Psychotropic Substances Act, 1985 (For short “NDPS Act”) and Section 25 of Arms Act, 1959 (Section 31 of NDPS Act was added later on) at Police Station Special Task Force, District SAS Nagar, Mohali, whereby an application filed under Section 311 of Cr.P.C. by the prosecution had been allowed.

2024:PHHC:112112



2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner has been facing trial for commission of offence mentioned above in the aforementioned FIR on the allegations that on 20.01.2021, he was apprehended by the police on the basis of a secret information. 450 grams of heroin and one unlicensed firearm was recovered at his instance and the co-accused. Supplementary challan had been filed in the case during the course of trial. A supplementary list of witnesses was part of the said supplementary challan which had been attached with the main file. After examining the witnesses cited in the main challan report, the prosecution closed its evidence. However, subsequently, an application had been filed by the prosecution for allowing it to examine the witnesses whose names were mentioned in the supplementary list. This application has been allowed by the learned trial Court vide order dated 24.04.2024.

3. It is argued by learned counsel for the petitioner that the impugned order is liable to be set aside as while passing the same, the learned trial Court did not consider the fact that the prosecution evidence had been closed long back i.e. on 27.07.2023. No sufficient reason had been given by the prosecuting agency for not summoning the witnesses cited in the supplementary challan at the relevant time. The learned trial Court also ignored the fact that even before filing the application in which the impugned order had been passed, another application under Section 311 of Cr.P.C. had been filed which was allowed vide order dated 13.09.2023. The prosecuting agency had adopted a very casual and negligent approach. A great prejudice has been caused to the petitioner as the disposal of the case is

2024:PHHC:112112



being delayed due to filing of applications at the fag end of the trial i.e. at the stage when even defence evidence had been concluded and arguments were to be addressed. Therefore, it is urged that the impugned order be set aside and the petition be allowed. To fortify his argument, learned counsel for the petitioner relied upon an authority cited as **Swapan Kumar Chatterjee v. Central Bureau of Investigation**, 2019 (14) SCC 328.

4. Per contra, it is argued by learned State counsel that the impugned order is well reasoned and does not warrant any interference. It was only on account of the fact that supplementary challan report and list of witnesses had been attached with the main challan report and could not come to the notice of the public prosecutor that the evidence of the prosecution was closed previously. The examination of the witnesses whose names were mentioned in the supplementary list was very much essential in just decision of the case. No prejudice was going to be caused to the petitioner as either way he was going to get due opportunity to cross-examine the witnesses cited in the supplementary list. While submitting that no illegality had been committed by the learned trial Court while passing the impugned order, it is urged that the petition is liable to be dismissed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the record.

6. At the outset, it may be mentioned that the well settled proposition of law is that though the powers under Section 311 of Cr.P.C. can be invoked by the Court to meet the ends of justice and for strong and valid reasons but they should be exercised with great caution and

2024:PHHC:112112



circumspection. This provision confers vast discretion upon the Court and is expressed in the widest possible terms. The discretionary power under the said Section can be invoked to meet the ends of justice and has to be exercised judicially and not arbitrarily or capriciously. The provisions of this Section should be exercised consistently with the provisions of the Code and the criminal law. Reference in this regard can be made to the judgment of the Hon'ble Supreme Court passed in **State vs. N. Seenivasagan**, (2021) 14 SCC 1, wherein it has been observed that the true test for the purpose of this Section is, whether it appears to the Court that the evidence of such person who is sought to be recalled is essential for just decision of the case and to **Manju Devi Vs. State of Rajasthan**, (2019) 6 SCC 203, wherein it was observed that the discretionary powers under section 311 of Cr.P.C. are intended to ensure that every necessary and appropriate measure is taken by the Court to keep the record straight and to clear any ambiguity in so far as the evidence is concerned as also to ensure that no prejudice is caused to anyone including the accused.

7. Undoubtedly, an application under Section 311 of Cr.P.C. cannot be allowed only to fill up lacuna in the case of the prosecution or of the defence or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused and even to give an unfair advantage to the opposite party. However, such power can certainly be and must be exercised when the evidence which is likely to be tendered by a witness is germane to the issue involved, while keeping in mind that opportunity of rebuttal, however, must be given to the other party.

2024:PHHC:112112



8. On applying the above discussed position of law to the peculiar facts and circumstances of the present case, it has been noticed that the learned Public Prosecutor had closed the prosecution evidence on 27.07.2023 after examining the witnesses whose names were mentioned in the challan report and it was only subsequently at the stage of producing defence evidence that the application under Section 311 of Cr.P.C. was filed by the prosecution/State for allowing the examination of witnesses mentioned in the supplementary list of witnesses. Obviously, the examination of these witnesses is necessary for proper and just decision of the case. However, it cannot be stated that it was on account of any mala fide that the proposed witnesses had not been summoned and produced. Undoubtedly, if the prosecuting agency would have been more vigilant then the witnesses named in the supplementary list could have been examined earlier but the benefit of lackadaisical attitude on the part of the prosecuting agency cannot be given to the accused in view of the reason that neither the examination of these witnesses would amount to filling up any lacuna in the case of the prosecution nor it could be stated that the witnesses were not intentionally examined earlier. Rather it was the duty of the trial Court also to be vigilant of the fact that all the witnesses whose names were mentioned in the challan report/supplementary challan report, were summoned and examined as such unless they were given up by the prosecuting agency. The presiding Judge could not be presumed to be a mere spectator and was expected to become a participant in the trial. The learned trial Court while considering the fact that the examination of the witnesses mentioned in the

2024:PHHC:112112



supplementary list was essential for just decision of the case coupled with the circumstance that the petitioner would also be having opportunity to cross-examine those witnesses and also to lead evidence in defence, had allowed the application so filed by the prosecution and in the light of the discussion as made above, I am of the considered opinion that no fault can be found in the order passed by the learned trial Court. The facts of the case cited by the petitioner being distinguishable, the same does not help the petitioner. With these observations, it is held that the petition does not deserve to be allowed. Accordingly, the same is dismissed.

28.08.2024
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(MANISHA BATRA)
JUDGE

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