

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-25420-2024
Date of decision: 20.05.2024

Vikram SinghPetitioner

Versus

State of U.T. Chandigarh ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sudesh K. Khurcha, Advocate
for the petitioner.

Mr. Yashwant Rathore, Addl. P.P., U.T. Chandigarh

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 07.05.2024 (Anneuxre P-4) passed by the learned Additional Sessions Judge, Fast Track Special Court, Chandigarh in case bearing FIR No.171 dated 05.09.2020 under Sections 376/328/506 of IPC registered at Police Station Industrial Area, Chandigarh, vide which the application for recalling the prosecution witness filed by the petitioner under Section 311 of Cr.P.C. has been illegally dismissed.

Learned counsel for the petitioner *inter alia* contends that the FIR (*supra*) was registered against the petitioner on 05.09.2020. It is further submitted that his mobile phone was taken into possession while conducting the personal search. On 21.09.2022, the prosecution has examined Irfan @ Ishan. On 11.10.2022, the petitioner was released on regular bail and thereafter, on 15.09.2023, the mobile phone of the petitioner was released on *sapurdari*. The petitioner moved an application before the learned trial Court for placing on

CRM-M-25420-2024

-2-

record the recorded conversation between the petitioner and PW-12 Irfan @ Ishan and the pen drive containing the conversation along with certificate under Section 65 B of the Indian Evidence Act was placed on record by the petitioner. On 11.03.2024, the petitioner filed an application under Section 311 Cr.P.C. for recalling the witness, namely, Irfan @ Ishan for confronting him with the recorded conversation as the same is just and essential for the outcome of the trial and it satisfy the parameters of Section 311 of Cr.P.C. once the test of essentiality is passed then the Court is required to allow the application under Section 311 of Cr.P.C. and any denial of the opportunity to the accused would amount to violation of Article 21 of the Constitution of India which ensures free and fair trial. Further, the learned trial Court has declined the prayer of the petitioner without even examining the essentiality of such evidence and now the case is fixed for 22.05.2024 for defence evidence. It is further contended that the petitioner being an accused has right to put a question to Irfan @ Ishan for proving his innocence and it is a trite law that a person cannot be denied his right to defend himself.

Per contra, the learned State counsel submits that there is a delay in approaching the Court for producing the recorded conversation as it was in the knowledge of the petitioner from the very beginning. The learned trial Court has rightly rejected the petition filed by the petitioner as the petitioner wants to fill up the lacuna and no suggestion was put to PW-12-Irfan @ Ishan with regard to any conversation between them for falsely implicating the petitioner in the FIR (*supra*) at the time of his cross-examination.

Having heard learned counsel for the parties and after perusing the records, it transpires that the pen drive contains the purported conversation

between the petitioner and PW-12 Irfan @ Ishan and this conversation is essential and material for the just and proper decision of the present case. This piece of evidence would be necessary for deciding the controversy effectively. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court passed in 'Varsha Garg Vs. The State of Madhya Pradesh and others' 2022 (4) R.C.R(Criminal) 328 and the judgment of this Court passed in 'Vinod Kumar Vs. State of Haryana and others' CRR No.377 of 2020.

The principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India and any denial of the best available evidence or opportunity of effective and substantial hearing to accused in proving his defence would amount to denial of free and fair trial.

A two judge Bench of the Hon'ble Supreme Court in 'VN Patil Vs. K. Niranjana' in Criminal Appeal No. 267 of 2021 decided on 04.03.2021 examined the scope of the power under Section 311 of Cr.P.C and 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.”

Further, a Division Bench of this Court in 'Sukhdev Singh vs. State of Punjab', 1982 Cr. LJ 2201 has held that:-

“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".

In view of the above, the impugned order dated 07.05.2024 (Annexure P-4) is hereby set aside and the learned trial Court is directed to provide one effective opportunity to the defence to put the contents of the pen drive to PW-12 Irfan @ Ishan.

(HARPREET SINGH BRAR)
JUDGE

20.05.2024

Neha

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