



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CRM-M-29039-2024

Date of decision: 08.07.2024

Sukhwinder Singh

....Petitioner

V/s

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Raj Kumar Chandana, Advocate for the petitioner.

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 01.05.2024 passed by Sessions Judge, Rupnagar whereby application filed by the prosecution under Section 311 of Code of Criminal Procedure, 1973 (hereinafter to be referred as the 'Cr.P.C.'), to re-summon PW-7 Lady Constable Gurpreet Kaur and summon Constable Harjinder Singh, has been allowed.
2. Learned counsel for the petitioner has argued that the application has been filed by the prosecution just to prolong the trial and to harass the accused-petitioner. It has been further argued that a false and fabricated story has been concocted by the prosecution just to mislead the Court. Moreover, the prosecution, which was supposed to file its list of witnesses at the time of filing of the challan, has failed to provide the same and thus, the prosecution cannot be permitted to fill up the lacuna in the case, at this stage. It has been further argued that the Court below has allowed the application on the ground that both the witnesses are material to



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. I have heard learned counsel for the petitioner and perused the paper-book.

4. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; 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 guidelines 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.”

5. More recently this Court in a case titled as ***Sunny Bajwa and another vs. State of Punjab and others: 2024:PHHC:042517***, has observed as under:

“8. As a sequel to above ruminative discussion, the following principles emerge:

(I) A criminal trial Court may exercise power(s) under Section 311 of Cr.P.C of 1973 not only on a plea by a party to the trial including accused, prosecution, complainant and witness or on its own volition but also on a plea of a person who is seemingly rank stranger to the trial.

(II) Whenever invocation of such power is sought for, at the instance of a person who is seemingly rank stranger/who is not a party to the trial; such criminal trial Court ought to exercise its powers with a much higher degree of circumspection. It goes without saying that according of cogent and convincing reason(s) would be a condition precedent to exercise of such power.

(III) A person (whether party to the trial or otherwise) may seek to invoke power(s) of a criminal trial Court by making a written or oral plea. However, it would be axiomatic that a criminal Court, ordinarily entertains such a plea by way of written application.”

6. The impugned order arises from a trial being undertaken against the petitioner (herein) in FIR bearing No.0091 dated 29.12.2021 came to be registered at Police Station Morinda, District Rupnagar, Punjab under Section 346 of IPC, relevant whereof reads as under:-

“Copy of the Statement, "Statement of unknown Gurdeep Singh son of Dharampal Singh resident of Bur Majra, Police Station Sadar Morinda, District Rupnagar aged about 40years Mobile No. 98765-35904. Stated that I am resident of the aforesaid address and does the farming. I am married. My wife Hardeep Kaur is housewife. I have three daughters. My elder daughter is Jasmine Kaur whose date of birth and year is



12.12.2004 who is studying in 10+2 in Rajan Public School at Village Bur Majra. Yesterday on 28.12.2021, she was present at home. In the evening on the terrace of the house, I was watching T.V. with my wife Hardeep Kaur and three daughters Jasmine Kaur, Sumanpreet and Rajneet. At about 07:30PM in the night, my elder daughter Jasmine Kaur came out from the terrace saying that she was going to bathroom and later on, she has not come back. I and my wife searched her in the home and neighbour, but she has not found. Till now, we are searching my daughter Jasmine Kaur at the relatives and area. But she couldn't be found. We have doubt that some unknown person has kept her in his custody. That my daughter is minor. I was going with my uncle's son Gursewak Singh to give information at the police station. You met near Kainaur Bus Stand. Statement is written and heard to be correct. Sd/ Gurdeep Singh. Statement approved by: Sd/- Gursewak Singh. Verified by:- Lachhman Singh, ASI, 69/FGS, Police Station Sadar Morinda.”

7. Investigation was thereafter carried out and challan (report under Section 173 of Cr.P.C., 1973) was presented against the accused. During the course of trial proceedings, an application on 04.01.2024, under Section 311 of the Code was filed (hereinafter to be referred as ‘application in question’) on behalf of the prosecution to re-summon PW-7 Lady Constable Gurpreet Kaur on the ground that the said witness on 07.01.2022 had visited the office of CFSL to deposit the parcels pertaining to accused and victim but the said samples/parcels were returned on account of objections raised by CFSL. Thereafter on 15.04.2024, another application had been moved by the prosecution to summon Constable Harjinder Singh on the ground that the said witness inadvertently could not be cited as a witness during the presentation of challan and the testimony of the said witness was very much essential for just decision of the case. The application was, however, opposed by the accused-petitioner and separate replies thereto were also filed. A preliminary objection was raised with regard to application dated 04.01.2024 that the said witness was discharged,



after being examined at length, by the prosecution and also cross-examined by the defence and thus, the prosecution cannot be allowed to fill lacunae in its case. With regard to summoning of Constable Harjinder Singh, it was contended that the application had been filed at a belated stage when most of the prosecution witnesses have already been examined and cross-examined. The instant application had been filed just to delay the proceedings and to harass the accused-petitioner. It was further submitted that a false and concocted story has been presented by the prosecution just to mislead the Court below and to delay the trial. It is in this factual backdrop, the impugned order dated 01.05.2024 was passed by the learned trial Court.

8. The factual conspectus of the matter in hand reflects that the instant application has been filed by the prosecution as the evidence of both the witnesses was very much necessary for effective and proper adjudication of the case in hand. It is trite law that the witness can be summoned at any stage, if his/her testimony is material for just decision of the case or any witness can be re-examined, if already examined. By way of the application in question, the summoning of two witnesses was sought for. This aspect assumes more importance in the present case as the witnesses, who are sought to be summoned/re-summoned, have material bearing and to complete the link evidence in the case. Moreover, no prejudice would be caused as the accused-petitioner will be permitted to cross examine them as well.

9. For the foregoing reasons, this Court does not find any error in the impugned order passed by the Court below. In the considered opinion of this Court, the trial Court has appropriately dealt with the application in



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question by allowing the same. Hence the present petition deserves to be dismissed.

- 10. Ordered accordingly.
- 11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

July 08, 2024
Ajay

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