

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM M-36096 of 2023
Date of Decision: 01.04.2024

Aman Ali ...Petitioner
Versus
State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Sumit Kalyan, Advocate, for the petitioner.

Mr. Deepinder Brar, Sr. DAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 of the Cr.P.C. with a prayer to set aside the order dated 15.04.2023 passed by the Court of Additional Sessions Judge, Ludhiana, whereby, the application under Section 311 Cr.P.C. filed by the prosecution was allowed.
2. Learned counsel for the petitioner contends that the petitioner has been falsely implicated in a case bearing FIR No. 52 dated 15.05.2021 under Sections 307, 326, 148 and 149 of the IPC registered at Police Station Daba, District Ludhiana (Annexure P-1). With a view to falsely involve him in a criminal case, blank CD's were placed on record in the judicial file. However, at a later stage, an application was moved by the prosecution under Section 311 Cr.P.C. for placing on record another fabricated CCTV footage and a certificate under Section 65-B of the Information Technology Act to

create false evidence against him. Learned counsel further contends that the application under Section 311 Cr.P.C., was not maintainable in the present case as the prosecution had filed this application, just to linger on the matter and all the five CD's, which were earlier filed by the prosecution were not containing any data/footage. Thus, the prosecution had moved the application just to fill up the lacuna in the prosecution case, which was impressible in law.

3. On the other hand, the learned State counsel submits that the impugned order passed by the trial Court was well reasoned and the trial Court had correctly exercised the jurisdiction under Section 311 of Cr.P.C. Even otherwise, the rights of the petitioner/accused would not be prejudiced in any manner, as he would get an opportunity to cross-examine the witnesses, who will be produced by the prosecution.

3. I have heard learned counsel for the parties and perused the record.

4. Section 311 of Cr.P.C. has been reproduced below:-

“311. Power to summon material witness, or examine person present.

- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon 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

re-examine any such person if his evidence appears to it to be essential to the just decision of the case”.

5. It is apparent from the perusal of the provisions contained in Section 311 Cr.P.C. that in the first part, the word “may” has been used whereas in the second part it is “shall”. The second part imposes an obligation on the Court to summon and examine; or recall and re-examine any such person, if his evidence, appears to be essential to the just decision of the case. Even, the Hon’ble Supreme Court and this Court have elaborately dealt with the ambit and scope of the powers to be exercised by the trial Court under Section 311 Cr.P.C. and several guiding principles have been laid down. Whenever, the Court comes to a conclusion that the additional evidence/the evidence sought to be produced is necessary and without consideration of such evidence, there would be failure of justice, in such an eventuality, there is an obligation on the Court to permit the leading of such an evidence during the course of the trial. Even otherwise, whenever, the Court feels that such evidence is essential for the Court to find out the truth and to render a just decision, the Court would be perfectly justified in exercising the discretion contemplated in Section 311 Cr.P.C.

6. Adverting to the facts of the present case, it has been mentioned in the impugned order that the CD’s available on the file were played during the evidence of the prosecution, but the same were found blank. However, the CD’s, which were in the possession

of the IO, were played and the same showed the view of the occurrence. The trial Court has correctly observed that viewing/placing on record all such CD's of occurrence was essential for the just and effective disposal of the matter and the rights of the accused would not be prejudiced in any manner. Even otherwise, the law is well settled that both the parties should be given a free hand to lead their respective evidence and the trial Court should decide the trial, after taking into consideration the evidence led by the parties. Even, in the present case, the evidence, to be led by the prosecution, would be subject to the mode of proof and an opportunity would be granted to the petitioner/accused to cross-examine the witnesses of the prosecution and, thus, the rights of the petitioner have been duly taken care of and protected by the trial court, while passing the impugned order.

7. In view of the above discussion, there is no reason to interfere with the impugned order dated 15.04.2023 passed by the Court of Additional Sessions Judge, Ludhiana and the present petition is ordered to be dismissed.

01.04.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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