

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision : 29.01.2024

1. CRR-2272-2019 (O&M)

Amarjit Singh Petitioner

versus

State of Punjab Respondent

2. CRR-2339-2019

Amarjit Singh Petitioner

versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Kishan Kahna, Advocate for
Mr. N.S. Lucky, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. N.S. Dadwal, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

1. These two revision petitions arise out of the same trial. By way of CRR No.2339 of 2019, challenge has been laid to order dated 19.04.2019, whereby the prayer made by the prosecution for recalling witness Head Constable-Butta Singh stands declined.

2. In CRR No.2272 of 2019, challenge is to the order dated 17.08.2019, whereby an application filed under Section 311 Cr.P.C. for permission to summon Dr. Harish Kirpal stands declined.

3. While assailing the impugned orders, counsel for the petitioner submits that the trial Court totally misdirected itself in passing the impugned orders as while passing the same, the trial Court has not tested the evidence sought to be produced on the touchstone of relevance.

4. *Per contra*, learned counsel for the accused submits that the trial Court has rightly recorded its anguish as the prosecution failed to produce the evidence despite availing 40 opportunities and thus declined the prayer made by the prosecution. It has been contended that keeping in view the conduct of the prosecution, the trial Court rightly dismissed the applications and thus there is no scope for interference by this Court while exercising revisional jurisdiction.

5. Having heard counsel for the parties and after going through the records of the case, keeping in view the law laid down by Apex Court in the case of ***Rajaram Prasad Yadav vs. State of Bihar*** reported as **2013(14) SCC 461** following ***Mohanlal Shamji Soni vs. UOI*** reported as **1991 Supp(1) SCC 271**, the test prescribed while dealing with the application filed under Section 311 of Cr.P.C. for leading additional evidence is as under:-

“23. From a conspectus consideration of the above decisions, while dealing with an application under Section 311 Criminal Procedure Code read along with Section 138 of the Evidence Act, we feel the following principles will have to be borne in mind by the Courts:

a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under Section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under Section 311 Criminal Procedure Code should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under Section 311 Criminal Procedure Code should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of Section 311 Criminal Procedure Code simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion.

The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under Section 311 Criminal Procedure Code must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

6. From the perusal of both the orders, it is evident that the trial Court has not considered the application moved by prosecution on the touchstone of relevance. Resultantly, the impugned orders dated

17.08.2019 and 19.04.2019 are hereby set aside. Trial Court is directed to decide the application afresh in accordance with law by ascertaining whether the said evidence is relevant for adjudication of the matter in hand or not. It is made clear that the parties shall appear before the trial Court on **11.03.2024**. On the same day, trial Court shall decide the application under Section 311 of the Code and in case the Court comes to the conclusion that any of the evidence is relevant, only one opportunity shall be granted to the prosecution to lead the same.

7. Disposed off accordingly.
8. A photocopy of this order be placed on the file of other connected case.

29.01.2024
Dinesh

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No