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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRR-2783-2023

Date of decision: 16.02.2024

ANAND**....Petitioner****Versus****STATE OF HARYANA AND ANOTHER****....Respondents****CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY**

Present:- Ms. Seenu, Advocate, for
Mr. Lajpat Rai Sharma, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

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SANJIV BERRY, J.

1. By way of the present petition, petitioner has challenged the impugned order dated 18.09.2023 passed by learned Sessions Judge, Panipat in FIR No. 811 dated 19.10.2021 under Section 302, 34 IPC, Police Station Quilla Panipat, whereby application under Section 311 Cr.P.C filed by petitioner for recalling of witness PW-5 Om Parkash for further examination has been dismissed.

2. Brief facts of the case are that the aforesaid FIR was registered, on the complaint made by respondent No.2 Om Parkash on the allegation that petitioner had grudge against him due to some altercation took place between them. The petitioner along with his friends murdered his son Sunil by causing injuries with brickbat, with these allegations, police registered

the FIR. After completion of the investigation, challan was presented in Court where it is pending trial. Complainant-respondent No.2 Om Parkash father of the deceased was examined as PW5 and had supported the case of the prosecution (Annexure P-2). He was thoroughly cross examined by learned defence counsel. During the course of trial the petitioner had moved an application under Section 311 Cr.P.C (Annexure P-4) before the trial Court for recalling PW-5 Om Parkash complainant-respondent No.2 for further cross-examination which was dismissed vide the impugned order dated 18.09.2023 and aggrieved by the same, the present petition has been preferred.

3. It is *inter alia* contended by learned counsel for the petitioner that the learned trial Court erred in declining the application under Section 311 Cr.P.C moved by the petitioner for the purpose of recalling of PW-5 Om Parkash for his further cross-examination. He submits that although PW-5 Om Parkash was cross-examined by the counsel representing the petitioner but some relevant questions could not be asked in his cross-examination and this fact came to his knowledge when he changed the counsel and accordingly moved the application under Section 311 Cr.P.C. He submits that it is settled preposition that the trial Court has ample power to summon any witness for the purpose of cross-examination or re-examination and in the present case further cross examination of PW-5 Om Parkash is essential for the just decision of the case, which was wrongly declined by learned trial Court, hence he prayed for acceptance of the petition.

4. On the contrary, the learned State counsel has assailed these arguments by submitting that thorough and ample opportunities were

granted by the learned trial Court at the time of the cross-examination of material witness PW-5 Om Parkash to the learned defence counsel representing the petitioner. He refers to the Annexure P-2 dated 17.10.2022 to support his contentions and further submits that simply because the petitioner has changed the counsel will not be a sufficient ground for allowing recalling of this witness for further cross-examination. He submits that the learned trial Court has passed the impugned order dated 18.09.2023 in accordance with the law and the instant application has been moved by the petitioner just to delay the proceedings without any basis and as such there is no merit in the present petition, which deserves dismissal.

5. Considering the submissions made by the learned counsel for the parties and perusing the record, it is not disputed that a case under Section 302, 34 IPC was registered on the statement of complainant Om Parkash, who happens to be the father of the deceased. During the course of trial this material witness was examined by the prosecution as PW-5 and was thoroughly cross-examined by learned defence counsel on 17.10.2022 as is evident from the perusal of Annexure P-2 placed on record by the petitioner.

6. The Petitioner filed an application under Section 311 Cr.P.C for recalling PW-5 Om Parkash for further cross-examination on 09.08.2023(Annexure P-4) after the cross-examination of PW-10 Rahul eye witness who turned hostile, claiming that some material questions could not be asked to PW-5 Om Parkash by the counsel representing the petitioner at that time and with the changed circumstances the petitioner insisted to recall Om Parkash PW-5 for further cross-examination. As stated above, the

learned trial vide the impugned order dated 18.09.2023 dismissed the application finding no merit therein.

7. The main contention of the petitioner challenging the impugned order dated 18.09.2023 is that the Court has powers under Section 311 Cr.P.C to recall or examine any person for the purpose of just decision of the case. The main thrust of the petitioner is that although PW-5 Om Parkash complainant of the case was cross-examined by the counsel representing him on 17.10.2022 but certain material questions were left and with the changed circumstances after examination of PW-10 Rahul eye witnesses his re-examination was necessitated.

8. It is, apt to mention here that there is no dispute so far as the powers conferred under Section 311 Cr.P.C upon the trial Court is concerned and the same power has to be used with the rider that it can be used only when it appears to the Court that it is essential for just decision of the case that a particular witness, may be recalled for further examination.

9. In this regard, the Hon'ble Apex Court has laid down certain principles to be borne in mind while dealing with application under Section 311 Cr.P.C in ***Rajaram Prasad Yadav vs. State of Bihar and another, 2013(3) R.C.R. (Criminal)726***, wherein it has been laid down that the Court can summon a person to appear as witness under the Section, if it is deemed essential for the just decision of the case and the power under Section 311 Cr.P.C should be resorted to by the Court only with the object of finding out truth and should be exercised judiciously. It is further held therein that the exigency of the situation, fair play and good sense should be the safeguard while exercising such discretionary power under this Section.

10. Further, it has been held by Hon'ble Apex Court in ***AG vs. Shiv Kumar Yadav and Anr. 2015(4) RCR (Criminal) 312 (SC)***, that this power under Section 311 Cr.P.C 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 decision of the case.

11. Thus, it is settled preposition that the discretionary power under Section 311 Cr.P.C is to be exercised by learned trial Court only if the evidence of witness appears to the Court to be essential for the just decision of the case. The paramount requirement while exercising this power is the “*just decision*” and for that purpose the essentiality of a person to be recalled or re-examined has to be ascertained judiciously and with extreme care and caution.

12. Applying these principles to the facts and circumstances of the present case, it transpires that the witness namely Om Parkash PW-5 who happens to be the complainant of the case and being the father of the deceased had been examined by the prosecution and was cross-examined at length by learned counsel representing the petitioner as is evident from the (Annexure P-2). The petitioner while moving the application (Annexure P-4) dated 09.08.2023 had simply mentioned that some material questions could not be asked by the counsel representing petitioner at that time and that there has been some changed circumstances after examination of the eye witness Rahul as PW-10. The petitioner had not mentioned in the application as to what are the material question which could not be asked despite the fact that PW-5 Om Parkash was subjected to lengthy cross-examination by the counsel representing the petitioner nor has he mentioned as to which

material questions could not be put to the witness at the relevant time. The learned trial Court has considered all these aspects judiciously while dealing with the application and rightly dismissed it finding no ground having been made out for granting permission to the petitioner under Section 311 Cr.P.C. Even otherwise, no infirmity or illegality has been observed in the impugned order so as to call for interference while exercising the revisional jurisdiction.

13. The learned trial Court has judiciously and exhaustively considered the submissions of the petitioner while dismissing the application under Section 311 Cr.P.C, vide the impugned order dated 18.09.2023 and I find no illegality or infirmity therein so as to call for any interference therein. As a consequent, finding no merit in the instant petition, the same is hereby dismissed.

14. Any observation made above shall not be construed as opinion of this Court on the merits of the case.

16.02.2024
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(SANJIV BERRY)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |