



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
CRR-2254-2024 (O&M)
Date of decision: 13.11.2024

AG

...Petitioner

versus

State of Punjab and another

...Respondents

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lupil Gupta, Advocate
for the petitioner.

HARPREET SINGH BRAR J. (Oral)

CRM-44842-2024

The present application has been filed under Section 428 of the Code of Criminal Procedure, 1973 (hereinafter ‘Cr.P.C’) seeking to place on record documents annexed as Annexure P-1 to P-4.

For the reasons mentioned in the application, the same is allowed and the documents (Annexure P-1 to P-4) are taken on record.

CRR-2254-2024

1. The present revision petition has been preferred against the impugned order dated 29.08.2024 passed by the learned Additional Sessions Judge, Fast Track Special Court, Mansa whereby the application of the petitioner under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter ‘BNSS’) (*erstwhile Section 311 Cr.P.C.*) was dismissed, in the case stemming from FIR No.117 dated 09.06.2022 registered under Sections 376, 506 IPC at Police Station City-2 Mansa.
2. Learned counsel for the petitioner *inter alia* contends that in order to prove its case, the prosecution examined one Sham Lal as PW-4. He was



partly examined on 10.04.2024 and further examination was deferred as certain documents were required to be produced in original. On 19.07.2024, the said documents were produced and the examination-in-chief of PW4 was concluded. Pertinently, the examination of Sham Lal as PW-4 was prematurely concluded as he was yet to narrate complete version of the alleged incident. The learned Court below has erroneously treated his examination-in-chief as 'nil.' Therefore, the petitioner had moved an application under Section 348 BNSS seeking recalling of PW4-Sham Lal so that he can narrate the complete version. However, the same has been unjustly dismissed by the learned trial Court vide impugned order dated 29.08.2024.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that the FIR(supra) was registered at the instance of the petitioner, who is the victim of the alleged occurrence. The examination-in-chief of PW4-Sham Lal commenced on 10.04.2024 but could only be completed in part as production of original documents was sought on objection raised by the defence. Thereafter, on 19.07.2024, the said original documents were produced by MHC Amandeep Singh, and were put to PW4-Sham Lal. Thereafter, the statement was signed by PW4-Sham Lal and the examination-in-chief was concluded and his cross-examination, which is a prerogative of the defence, was deferred on request of the proxy counsel. There is no material available on the record that would even remotely suggest that the examination-in-chief of PW4-Sham Lal was treated as 'nil.' Clearly, this contention of the learned counsel for the petitioner is fanciful and not based in reality.

4. Further still, the application under Section 348 BNSS was made by the petitioner-victim on the ground that PW4-Sham Lal had not narrated the



complete version yet. It must be understood that the victim-complainant cannot be allowed to drive the trial. It is a matter of fact that after production of the documents sought on 19.07.2024, the statement rendered by PW4-Sham Lal was read over to him and his signature were affixed on the same, in presence of the Public Prosecutor. It was only after this exercise that the examination-in-chief of PW4-Sham Lal was considered to be concluded. Therefore, when the witness himself has affirmed that his statement is complete, the petitioner-victim has no locus to recall him under Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*).

5. Section 348 BNSS (*erstwhile Section 311 Cr.P.C.*) empowers the Court to recall and re-examine a witness or summon a person not originally summoned as a witness, at any stage of inquiry, trial, or proceeding. This discretionary power vested with the Court should be used with caution and prudence and only when compelling and legitimate reasons are indicated. A witness cannot be recall in an automatic, mechanical manner. Such action should only be taken when recalling is necessary to arrive at a just decision. A two judge Bench of the Hon'ble Supreme Court in ***V.N. Patil vs. K. Niranjan (2021) 3 SCC 611*** examined the scope of Section 311 of Cr.P.C and the following was observed:-

“15. 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* opined as follows:-

“10. ...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”.

6. The petitioner neither has any reason to be aggrieved by the manner in which PW4-Sham Lal was examined nor does she possess the *locus standi* to seek his recalling as a witness. A perusal of the impugned order dated 29.08.2024 indicates no perversity either that would warrant interference by this Court.

7. Accordingly, the present petition is dismissed being bereft of any merit. Pending miscellaneous application(s), if any, also stand(s) disposed of.

(HARPREET SINGH BRAR)
JUDGE

13.11.2024
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2024.11.26 15:22
I attest to the accuracy and
authenticity of this
order/judgment

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No