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

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CRM-M-57350-2024

Date of decision: 18th November, 2024

Maha Ram

...Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Manoj Kumar Sood, Advocate for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G. Haryana.

MANISHA BATRA, J (ORAL):-

The petitioner herein is seeking quashing of order dated 25.09.2023 passed by learned Judicial Magistrate Ist Class, in case arising out of FIR No. 136 dated 18.04.2016 registered under Sections 323, 379, 448 and 506 read with Section 34 of IPC, 1860 at Police Station Bhupani, Faridabad, order dated 04.09.2024, whereby the application under Section 311 of the Code of Criminal Procedure (for short 'Cr.P.C.') was dismissed as well as the order dated 05.11.2024, whereby the revision petition filed by the petitioner challenging the order dated 04.09.2024 had been dismissed by the Court of learned Additional Sessions Judge, Faridabad on the ground of non-maintainability.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner got registered the aforementioned FIR



against the respondents No. 2 and 3 on the allegations that they had criminally trespassed into his house on 17.04.2016, had taken illegal possession of the same and had damaged the electricity meter installed therein. It was also alleged that they had locked his house thereafter and extended threats to kill him. After registration of FIR and completion of usual formalities of investigation, challan has been presented and the learned trial Magistrate is conducting trial as against respondent No.3 and 4.

3. As revealed from the record, the evidence of the prosecution was closed by order of the Court on 25.09.2023 on account of failure of the prosecution to conclude its evidence. The learned Magistrate thereafter recorded statements of the accused under Section 313 of Cr.P.C. and adjourned the case for 06.10.2023 for recording defence evidence. The petitioner-complainant moved an application on 06.02.2024 under Section 311 of Cr.P.C. for summoning the investigating officer namely ASI Raghubir Singh and Constable Zahid and recording their statements. The learned Magistrate after considering the reply filed by the respondent-accused and hearing the contentions raised by both the sides, dismissed this application vide order dated 04.09.2024.

4. Feeling aggrieved, the petitioner filed a revision petition under Section 397 of the Cr.P.C. before the Court of learned Additional Sessions Judge, Faridabad challenging the order dated 04.09.2024 which was dismissed vide order dated 05.11.2024.

5. It was argued by learned counsel for the petitioner that the order dated 25.09.2023, whereby the learned Magistrate had closed the evidence



of prosecution is liable to be set aside due to the reason that this order was passed without considering the fact that two of the material witnesses of the prosecution had been previously appearing before the Court for recording their statements but the same could not be examined. It is further argued that those two witnesses namely ASI Raghbir Singh and Constable Zahid were sought to be summoned by the petitioner as their examination was very much necessary for just decision of the case. However, the learned Magistrate dismissed the said application by observing that more than 34 effective opportunities were given to the prosecution without noticing that the above named two witnesses had been regularly appearing and their statements could not be recorded either due to request made by counsel for the accused or non-appearance of the accused. It is therefore, submitted that the orders dated 25.09.2023 and 04.09.2024 are not sustainable in the eyes of law.

6. With regard to the order dated 05.11.2024 as passed by learned Additional Sessions Judge, Faridabad, it is argued that since the impugned order dated 04.09.2024 was bad in the eyes of law, therefore, the revisional Court was very much competent to consider the fact of setting aside that order by exercising its powers of revision which was not so done. Therefore, it is argued that the said order is also liable to be set aside.

7. I have heard learned counsel for the petitioner at considerable length and have gone through the record carefully.

8. A perusal of the order dated 25.09.2023 reveals that the learned Magistrate while observing that despite last opportunity having been availed



by the prosecution, it had failed to conclude its evidence, had closed the prosecution evidence. The said order had not been challenged by the petitioner by filing any revision petition and it has been challenged now i.e. after a gap of more than one year and one month by making prayer to invoke power under Section 528 of BNSS. Then application under Section 311 of Cr.P.C. had been filed by the petitioner seeking recall of two witnesses by submitting that they were important witnesses and his prayer to that effect had been rejected vide order dated 04.09.2024 by observing that the prosecution had availed more than 34 effective opportunities to conclude its evidence. The FIR pertained to the year 2016. No doubt, copies of some orders of trial Court have been placed on record which show that the above two named witnesses were present in the Court but were discharged on those particular dates due to non appearance of the counsel for the accused or the accused themselves. However, these are stray orders only do not show that the above named witnesses had been regularly appearing before the trial Court. The trial Court had granted several opportunities to the prosecution to conclude its case. Under Section 311 of Cr.P.C., the Court has power to recall or re-examine any witness whose examination is considered to be necessary for just decision of the case and who could not be examined or recall earlier. In the instant case, it has not been explained as to why, the above named two witnesses could not appear prior to 25.09.2023 for recording their statements. The powers under Section 311 of Cr.P.C. are to be exercised judiciously and with great circumspection and not in a routine manner. When the prosecution has already availed more than sufficient



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opportunities to conclude its evidence, then no ground was obviously made out for granting more opportunities to the complainant/ prosecution for that purpose. As such, this Court sees no illegality or infirmity in the order dated 24.09.2023 and 04.09.2024 which may warrant interference. So far as the order dated 05.11.2024 passed by the Additional Sessions Judge, Faridabad is concerned, he had rightly observed that the order passed under Section 311 of Cr.P.C. being an interlocutory order, revision was not maintainable against the same and the aggrieved party could invoke inherent powers of the High Court under Section 482 of the Code. Learned counsel for the petitioner has not been able to cite any provision of law to the contrary. As such, this order is also not liable to be interfered with. Accordingly, finding no merits, the petition is dismissed.

9. Since the main petition has been dismissed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

18th November, 2024

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes / No
2. Whether reportable	:	Yes / No