

2025:PHHC:005507



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

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**CRM M-1783 of 2025
Date of Decision: 15.01.2025**

Mahavir Mittal

... Petitioner

Versus

State of Haryana

... Respondent

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

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

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the order dated 16.11.2024 (Annexure P-6) passed by the Court of Additional Sessions Judge, Rohtak, whereby, two applications filed by the petitioner under Section 311 Cr.P.C. as well as two other miscellaneous applications filed by the petitioner have been ordered to be dismissed in a case arising out of FIR No. 7 dated 23.05.2018 registered under Sections 7 and 9 of Prevention of Corruption Act at Police Station S.V.B. Rohtak.

2. The brief facts of the case are that one FIR under Sections 7 and 9 of the Prevention of Corruption Act (hereinafter to be referred as '**the PC Act**') was registered against the present

petitioner on the basis of the complaint moved by the complainant with the allegations that his two cases regarding his shop and house were pending in the Court of Additional District Judge, Rohtak. When the complainant met the petitioner, who was working in the copy branch of District Court, Rohtak, for getting some certified copies of documents, the petitioner falsely told him that the judicial officer was well known to him and the petitioner demanded a sum of Rs. 20,000/- from the complainant and the petitioner had taken a sum of Rs. 18,000/- from him. With these broad allegations, the FIR in the present case was registered against the petitioner.

3. After the presentation of the challan, the charge under Sections 7, 9 and 13 of the PC Act was framed against the petitioner by the Court of Additional Sessions Judge, Rohtak on 26.07.2018 and, thereafter, the case was listed for prosecution evidence. During the pendency of the trial, the petitioner moved four applications before the trial Court and vide the impugned order dated 16.11.2024 (Annexure P-6), all four applications were ordered to be dismissed by the trial Court.

4. First of all, this Court would deal with two applications under Section 311 Cr.P.C. moved by the petitioner. The first application under Section 311 Cr.P.C. (Annexure P-1) was filed by the petitioner on 29.11.2022 with a prayer to re-examine the complainant by stating that PW2 Ashok Kumar complainant appeared as a witness

on 18.07.2019, wherein, he had supported the prosecution case and stated that the petitioner had demanded bribe and he had paid bribe to the petitioner. However, during the departmental inquiry held on 22.02.2019, complainant Ashok Kumar (PW2) had turned hostile and had not supported the case of the prosecution. Consequently, it was requested that permission may be granted to the petitioner to re-examine PW2 Ashok Kumar, complainant.

5. Second application under Section 311 Cr.P.C. (Annexure P-2) was moved by the present petitioner on 21.04.2023 for recalling PW5 Daya Chand, shadow witness and PW9 Pawan Kumar, Duty Magistrate for further cross-examination/re-examination. In the application (Annexure P-2), it was stated that the Additional District and Sessions Judge, Rohtak, had colluded with his lawyer Mr. J.K. Gakhar and the statements of PW5 Daya Chand and PW9 Pawan Kumar were wrongly recorded. In fact, PW5 Daya Chand, shadow witness had stated in his statement dated 26.02.2020 that they had not apprehended the petitioner and he was not the same person. However, the Additional District and Sessions Judge did not dictate this line and some other line was dictated. Even, his counsel J.K. Gakhar, Advocate did not raise any objection on the same. When the petitioner came to know about the same, he took copy of the statement of the shadow witness from the Court, got it read through his counsel and came to know that the Additional District and Sessions Judge, had

removed the said line from the statement and even his lawyer did not raise any objection to this. Consequently, he wanted to re-examine PW5 Daya Chand, witness so that truth may prevail in the Court. Still further, he levelled baseless allegations against the presiding officer and the Court as well as counsel in this regard. Still further, he stated that even PW9 Pawan Kumar, Duty Magistrate had also colluded with the public prosecutor and he had no idea as to how the statement was recorded. Consequently, the examination-in-chief of PW9 Pawan Kumar, Duty Magistrate, should also be got conducted in his presence. He ultimately prayed that the statement of PW9 Daya Chand, shadow witness and Pawan Kumar, Duty Magistrate should be recorded afresh, so that justice may be done to him.

6. I have heard learned counsel for the petitioner at length and perused the record carefully.

7. Before proceeding any further, it would be appropriate to reproduce Section 311 Cr.P.C., which is as under:-

“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 as a witness, or examine 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.”

8. Section 311 empowers the Courts to re-call or re-examine the person, if evidence appears to be essential for just decision of the case. The Supreme Court in **Rajaram Prasad Yadav Versus State of Bihar and another, (2013) 14 SCC 461** enunciated the principles to be considered while dealing with the applications under Section 311 of Cr.P.C., 1973 read with Section 138 of the Indian Evidence Act, 1872. The relevant portion is quoted below:-

“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 reexamine 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.”

9. Now adverting to the facts of the present case, this Court has no hesitation to hold that the averments made by the present petitioner in the application (Annexure P-2) are on the verge of contempt. The petitioner has made baseless and vague allegations against the presiding officer of the Court as well as his counsel. Even, no reasons have been mentioned as to why the presiding officer of the Court was against the present petitioner and there is no material to indicate that whether the statements of witnesses were wrongly recorded by the Court. Even, he did not spare the public prosecutor of the Court and has mischievously stated that the public prosecutor had also colluded with PW9 Pawan Kumar, Duty Magistrate. Thus, the petition deserves to be dismissed solely on this ground.

10. The petitioner had filed first application (Annexure P-1) on 29.11.2022 for the re-examination of PW2 Ashok Kumar, complainant. It was stated that the statement of PW2 Ashok Kumar, complainant was recorded before the Court on 18.07.2019, wherein, he had supported the case of the prosecution and clearly stated that the bribe was demanded and was paid to the present petitioner. However, it was alleged that in the departmental inquiry held on 22.02.2019, PW2 Ashok Kumar, complainant had not supported the case of the prosecution. In fact, when the statement of PW2 Ashok

Kumar, complainant was recorded before the trial Court on 18.07.2019, the present petitioner was represented by a counsel and had the knowledge of the statement of PW2 Ashok Kumar, complainant dated 22.02.2019, which was recorded during the departmental inquiry. Thus, the petitioner had the liberty to confront PW2 Ashok Kumar, complainant, with his statement, which was recorded five months ago in the preliminary inquiry.

11. Still further, the statement of PW2 Ashok Kumar, complainant was recorded on 18.07.2019 and the application under Section 311 Cr.P.C., for re-examination of PW2 Ashok Kumar, complainant, was moved after a delay of more than 03 years and 04 months without any justification. The above said first application under Section 311 Cr.P.C. had been filed by the petitioner rather belatedly and without any justifiable grounds. The witness, i.e., PW2 Ashok Kumar, complainant was duly cross-examined at length by the counsel representing the petitioner and the order passed by the trial Court is not found to be suffering from any infirmity. It is not even the case of the petitioner that he had not examined the witness at all or only formal questions were put to PW2 Ashok Kumar, complainant during cross-examination. Thus, there was no ground for recalling PW2 Ashok Kumar, at this belated stage for further cross-examination/re-examination.

12. Still further, the petitioner moved the second application (Annexure P-2) under Section 311 Cr.P.C. for re-examination/further cross-examination of PW5 Daya Chand, shadow witness and PW9 Pawan Kumar, Duty Magistrate. It was wrongly stated that the presiding officer of the Court had colluded with J.K. Gakhar, Advocate, counsel for the petitioner and the statement of the witnesses were not recorded properly. First of all, the petitioner had moved the first application under Section 311 Cr.P.C. (Annexure P-1) on 29.11.2022 and by that time, PW5 Daya Chand and PW9 Pawan Kumar Duty Magistrate had already made their statements. However, no such prayer for recalling them as witnesses was made in the first application under Section 311 Cr.P.C., dated 29.11.2022. Consequently, the statements of PW5 Daya Chand and PW9 Pawan Kumar were also recorded on 26.02.2020 and the petitioner had come to know from the statements that those were wrongly recorded by the trial Court. Still, the second application under Section 311 Cr.P.C. (Annexure P-2) was moved by the petitioner on 21.04.2023, i.e., after almost 03 years of their statements. Still further, in the application (Annexure P-2), the petitioner had levelled false and baseless allegations and no supporting material was placed on record. It appears that the petitioner had moved application only with a view to delay the process of Court and the trial Court had rightly dismissed the

application with costs of Rs. 1,000/-. Rather in such cases, exemplary costs should be imposed on such mischievous litigants, who levelled false and baseless allegations against the presiding officer of the Court.

13. The petitioner moved the 3rd application on 13.09.2023 (Annexure P-3) for recalling the order dated 26.07.2018, whereby, charge under Sections 7, 9 and 13 of the PC Act was framed against the present petitioner. In fact, the averments made in the application were vague and application for discharge was moved after gap of 05 years of framing of charge sheet against the present petitioner. In the present case, the Court had framed charge against the petitioner on 26.07.20218 and, thereafter, 09 witnesses were recorded. Thus, apparently, no such application was maintainable before the trial Court and the application was totally misconceived and has been correctly dismissed by the trial Court. There is no provision in Code of Criminal Procedure/Bharatiya Nagarik Suraksha Sanhita, 2023 for filing such applications before the trial Court during the dependency of the trial.

14. Still further, the petitioner had moved the fourth application (Annexure P-4) under Sections 145, 155 and 155(3) of Indian Evidence Act and Section 162 Cr.P.C. and certain vague averments have been made in the application. As per Section 145 of the Indian Evidence Act, the previous statement of a witness may be

used for cross-examination. Still further, certain vague averments and irrelevant averments were made in the application (Annexure P-4) and the trial Court has rightly dismissed the said application as well.

15. In view of the above discussion, this Court finds no ground to interfere with the impugned order dated 16.11.2024 (Annexure P-6) passed by the trial Court and the present petition is ordered to be dismissed.

15.01.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

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