

2025:PHHC:043579



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

137

**CRR No.842 of 2025
Date of Decision: 28.03.2025**

Poonam

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Rashika Bansal, Advocate and
Mr. Satbir Singh, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioner by challenging the order dated 03.03.2025 in Sessions case No.291 of 2015 titled as *State v. Sunil and others* arising out of FIR No.209 dated 24.04.2015, registered under Sections 302, 120-B and 34 of IPC and Section 25 of Arms Act, 1959 at Police Station City Bahadurgarh whereby an application filed under Section 348 of Bharatiya Nagarik Suraksha Sanhita, 2023 (For short "BNSS") (pari materia with Section 311 of Cr.P.C.) for recalling one witness namely PW-7 Dr. Anand had been dismissed.
2. Brief facts relevant for the purpose of disposal of this petition are that the petitioner who is one of the accused in the aforementioned case, is facing trial for commission of aforementioned

2025:PHHC:043579



offences. She moved an application for recalling PW-7 Dr. Anand on the ground that certain questions regarding other pending cases between the parties were left to be asked to this witness. It was submitted that if such questions were not asked, a great injustice would be caused to the petitioner. The learned trial Court dismissed this application vide order dated 03.03.2025 by observing that no ground had been made out for recalling the above witness.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as infact the statement recorded by PW-7 was not his free and voluntary statement but was recorded under fear and pressure of some interested persons to cause harm to the petitioner. More so, various necessary questions regarding other pending cases between the parties were left to be asked. The learned trial Court did not consider the prayer made by the petitioner in a proper perspective and committed a grave error in rejecting her application. It is, accordingly, argued that the impugned order be set aside, the petition be accepted and the application for recall of PW-7 be allowed.

4. I have heard learned counsel for the petitioner at considerable length and have gone through the material placed on record.

5. A copy of the application filed by the petitioner before the learned trial Court has been shown to this Court and on a perusal of the same, it is revealed that only reason for recall of PW-7 as given therein is that some questions regarding the cases pending between the parties, were

2025:PHHC:043579



left to be asked. Admittedly, the application by the petitioner had been moved after a lapse of six and half years from the date of examination of PW-7. The reason which has been given by the petitioner for recall of PW-7 cannot be stated to be plausible at all because if certain other cases are pending between the parties, material qua that can be produced by the petitioner during her defence evidence. It clearly appears that the petitioner sought recall of PW-7 either to delay the disposal of the case or to fill the lacuna in her case which she could not be allowed to do. The well settled proposition of law is that the prayer for recall or re-examination must not be allowed only to fill up lacunas in the case of the prosecution, or of the defence or to give an unfair advantage to the opposite party. In ***Swapan Kumar Chatterjee vs. Central Bureau of Investigation, 2019 (2) Scale 654***, Hon'ble Supreme Court has held that the power conferred under Section 311 Cr.P.C. should be invoked by the court only to meet the ends of justice and for strong and valid reasons and it should be exercised with great caution and circumspection. Though, Section 311 Cr.P.C. confers vast discretion upon the Court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. The provisions of this section should be exercised consistently with the provisions of the Code and the principles of criminal law. The discretionary power conferred under Section 311 Cr.P.C. has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Reference in this context can also be made to ***Vijay Kumar vs. State of U.***

2025:PHHC:043579



P., (2011) 8 SCC 136 as well as to the judgments rendered by this Court in *Bhag Singh vs. Madan Lal Walia, 1998 (3) Civil Court Cases 597(1) (P&H)* and *Joginder Singh vs. Devinder Kumar, 1999(1) Civil Court Cases 202(P&H)*. Since the petitioner failed to make out a case having any strong and justified reason for allowing recall of PW-7, therefore, in my considered opinion, no illegality or infirmity can be stated to have been committed by learned trial Court in declining the relief as prayed by the petitioner.

6. Keeping in view the aforesaid facts and circumstances, I do not find any ground to interfere with the impugned order, passed by the trial Court. Hence, the present petition is dismissed.

(MANISHA BATRA)
JUDGE

28.03.2025
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No