



CRM-M-64901-2024

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRM-M-64901-2024

Date of decision: 7th January, 2025

Amit @ Manna @ Amit Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Namit Khurana, Advocate for the petitioner.

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

MANISHA BATRA, J. (Oral):-

1. The instant petition has been filed by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*for short* 'BNSS') seeking quashing of order dated 02.12.2024 as passed by Learned Additional Sessions Judge, Kurukshetra in case arising out of FIR No. 280 dated 26.07.2019 registered under Sections 148, 149, 323, 307 and 506 of IPC, 1860 and Sections 25 and 27 of Arms Act, 1959 at Police Station Ladwa, District Kurukshetra, whereby an application filed by him under Section 311 of Code of Criminal Procedure (*for short* 'Code') had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR has been registered on the statement got recorded by the complainant-Gagan alleging therein that on



24.07.2019, he along with his friend Amit Thakur and one Balwinder had gone to Kamal Hospital. While they were returning from the said hospital, the petitioner along with the co-accused had started following them on two separate motor bikes, had intercepted them and then assaulted them thereby causing injuries to them with an intention to kill. They were taken to hospital and were provided medical treatment. The petitioner along with the co-accused is now facing trial for the aforementioned offences. The complainant Gagan had been examined as PW-5 before the learned trial Court thereafter, the petitioner moved an application Annexure P-3 before the learned trial Court seeking recall of PW-5 by submitting that some material and important question relating to the case could not be put to the above said witness due to inadvertence, though the same were necessary and important for just decision of the case. The abovesaid application had been dismissed by the learned trial Court, vide order dated 02.12.2024 by observing that PW-5 had already been cross-examined at length by the defence counsel.

3. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court failed to appreciate the fact that the further cross-examination of PW-5 was just and necessary for proper decision of the case as this witness was not cross-examined by learned counsel for the petitioner qua some important facts which are quite relevant. It is therefore, argued that the petition deserves to be allowed and the petitioner deserves to be given an opportunity to re-examine PW-5 so that this Court can arrive at a just decision of the case.



4. Learned Additional Advocate General, Haryana, who has advance notice of the petition, on the other hand, has argued that there is no illegality or infirmity in the impugned order and the same is well reasoned. PW-5 Gagan had been cross examined in detail by learned counsel for the present petitioner and the co-accused. The petitioner has not clarified as to which important question was left to be asked from PW-5 which was important for just decision of the case. The petitioner only seeks to fill up the lacuna in his case by re-examination of PW-5 which should not be allowed. Therefore, it is urged that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned Additional Advocate General, Haryana at considerable length and have gone through the record carefully.

6. Before proceeding further, it would be appropriate to have a glance on the provisions of Section 311 of of the Code, which read 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."

7. A bare reading of the above Section would show that it is in two parts. In the first part it gives discretion to the criminal Court and enables it



at any stage of an enquiry, trial or proceeding under the Code to summon any one as a witness or to examine any person present in Court or to recall and re-examine any person whose evidence has already been recorded. However, the second part is a rider in nature of mandate to exercise the aforesaid power of summoning, examining or re-calling etc. only if the evidence of a witness so called is essential to the just decision of the case. The Hon'ble Supreme Court in ***Mohan Lal Shamji Soni vs. Union of India and another : 1991 (3) RCR (Criminal) 1346*** had discussed the scope of exercise of powers under Section 311 of the Code and had observed that the discretionary power under Section 311 of the Code should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case. Hon'ble Supreme Court in ***Mohd. Iqbal Ahmad v. State of Andhra Pradesh : AIR 1979 Supreme Court 677*** had held that it is well settled that in a criminal case, the Courts should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. The liberty of the subject was put in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it. Reliance can further be placed upon ***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.

8. Adverting to the case in hand, it is apparent on a perusal of the statement of the PW-5 that when he was put to examination, there was a detailed cross-examination, which runs into about 10 pages. A perusal of the entire petition nowhere reveals as to what questions were left to be put to PW-5 during his cross examination, which the petitioner intends to pose to him by recalling the said witness. It is also not revealed as to how recalling of PW-5 is essential for just decision of the case. The petitioner has miserably failed to make out any case for recalling of PW-5. Hence, on applying the aforementioned well established position of law to the peculiar facts and circumstances of the present case, I am of the considered opinion that the petition does not deserve to be allowed and no case has been made out for exercising powers under Section 311 of Cr.P.C. It is accordingly held that the learned trial Court had rightly observed that no right *ipso facto* is deemed to be created in favour of the petitioner to recall PW-5 for further cross-examination as prayed for, as that would result in travesty of justice. Keeping in view the aforesaid facts and circumstances, I find no merit in the present petition. Hence, the same is dismissed.

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

[MANISHA BATRA]
JUDGE

7th January, 2025

Waseem Ansari

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