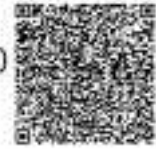


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRR No. 1805 of 2024 (O&M)**Date of decision: 07.04.2026****Azad Singh****...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Amit Chouhdary, Advocate
for the petitioner.

Ms. Himani Arora, DAG, Haryana.

Mr. Ajit Singh Lamba, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. The instant revision petition has been filed by the petitioner against the order dated 20.05.2024, passed by the Court of learned Additional Sessions Judge, Hisar in case arising out of FIR No. 293 dated 23.11.2021, registered under Section 304 of IPC and Sections 25 and 30 of the Arms Act, 1959 at Police Station Bass, District Hisar, whereby an application filed by the petitioner under Section 311 of Cr.P.C. had been partly allowed and the prayer made by the petitioner for re-examining four witnesses, namely Raj Singh, Sanup, Nitesh and Azad Singh/petitioner, had been declined.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint moved by the present petitioner/complainant alleging that on 22.11.2021, his son Sonu had gone to attend the video of one Vijay at village Puthi Samain. When

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the marriage procession was at the entrance point of the house of the bride, respondent No. 2 Narender Kumar had started firing shots from his licensed gun. A shot fired by him had hit the chest of petitioner's son, who had been rushed to the hospital but was declared to be brought dead. The aforementioned FIR was registered. Respondent No. 2 was arrested. He faced trial. His statement under Section 313 of Cr.P.C. was recorded.

3. As revealed from the record, after recording of statement of respondent No. 2 under Section 313 of Cr.P.C., the petitioner moved an application making prayer for summoning one Devender, Photographer, who was preparing the video of the marriage procession at the relevant time and also prayed for re-examination of witnesses Raj Singh, Sanup, Nitesh and himself. Learned trial Court, after considering the contentions raised by both the parties, partly allowed the application, thereby accepting the prayer of the petitioner for summoning of Devender, Photographer as a witness. However, with regard to re-examination of the above named witnesses, it was observed that two of those witnesses had already been declared hostile. Even the complainant had been examined in detail and as such, no ground had been made out to recall them. Aggrieved from the said order, the instant revision petition has been filed.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law to the extent to which the prayer made by him qua re-examination of above named witnesses had been declined. It is submitted that witness Devender, who is a Photographer, was present at the time of occurrence and had prepared a video. A perusal of the

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said video showed that respondent No. 2 was armed with a double barrel gun. He along with witnesses Nitesh, Sanup and other persons as well as the deceased was seen to be present in marriage procession at the time of occurrence. He has given a pen drive containing said video to the complainant only after recording of the statement of respondent No. 2 under Section 313 of Cr.P.C. and just a few days prior to his moving application under Section 311 of Cr.P.C. It is submitted that since this video shows the presence of the witnesses Nitesh and Sanup along with the victim as well as respondent No. 2, therefore, their re-examination is must for the purpose of confronting them with the said video and to establish their presence, which has not been asserted by them in their respective sworn depositions.

5. It is further argued by learned counsel for the petitioner that summoning of some official from the office of DSP, Hansi is must for the purpose of proving that the petitioner had filed an application before the police on 20.10.2021. It is submitted that since the recording in the video is contrary to the depositions made by the material witnesses Nitesh, Sanup and himself, hence, their re-examination is must. It is further argued that while passing the impugned order, the learned trial Court did not take all these facts into consideration and, therefore, the impugned order is not sustainable in the eyes of law to that extent. With these broad submissions, it is urged that the petition deserves to be accepted, impugned order is liable to be set aside to the said extent and the application filed by the petitioner under Section 311 of Cr.P.C. deserves to be allowed.

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6. *Per contra*, learned counsel for respondent No. 2 has argued that there is no illegality or infirmity in the impugned order, which is reasonable and speaking order. The witnesses, who are sought to be summoned by the petitioner for the purpose of re-examination, had been examined in detail. Now to fill up the lacuna in his case, the petitioner/complainant wants to recall them, which cannot be allowed. Recall of these witnesses would amount to causing great prejudice to respondent No. 2. Moreso, no reasonable ground has been made out for allowing the petition. Therefore, it is urged that the petition is liable to be dismissed.

7. Learned State counsel has not raised any serious objection to the submissions made by learned counsel for the petitioner.

8. This Court has heard the rival submissions.

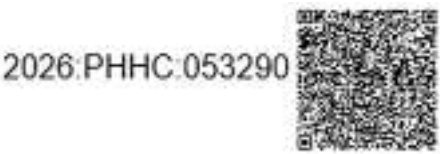
9. The petitioner has placed on record copies of the statements of PW-6 Sanup, PW-5 Nitesh, PW-3 Azad Singh and PW-8 SI Vijay Pal Singh, Investigating Officer of the case. A perusal of the same reveals that witnesses Sanup and Nitesh have not supported the prosecution version with regard to any incident of firing having taken place in their presence. They were declared hostile and were allowed to be cross-examined by the learned public prosecutor and were cross-examined as such. Copy of the sworn deposition of the petitioner also shows that he too had been examined in detail. Now the petitioner on the strength of some photographs seeks re-examination of aforementioned witnesses and an official from the office of DSP concerned. However, it has been pointed out by learned counsel for respondent No. 2 that even Devender, Photographer has since been examined and has not supported

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the prosecution version and has turned hostile. This fact has not been controverted by learned counsel for the petitioner. Since the claim raised by the petitioner is mainly based on the video recording, alleged to have been prepared by witness Devender himself (who has turned hostile), as such, it is certainly a debatable question as to whether the video recording or the photographs are to be considered to be admissible in evidence or not? The witnesses, who are sought to be re-examined, have already examined and cross-examined in detail. No doubt, the powers under Section 311 of Cr.P.C. (which corresponds to Section 348 of BNSS, 2023), can be exercised by the Court at any stage of trial to recall or re-examine any witness, if the examination of such witness is considered to be indispensable for just decision of the case. However, it is well settled proposition of law that an application under section 311 of Cr.P.C. 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.

10. 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 of 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 of Cr.P.C. has to be exercised judicially for reasons stated by the Court and not arbitrarily or capriciously. Reference in this context can be made to ***Vijay Kumar vs. State of U. 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)***.

11. On applying the above discussed position of law to the peculiar facts of the present case, it has been noticed that no reasonable ground for allowing the prayer as made by the petitioner has been made out for the reasons discussed above. As such, the learned trial Court has committed no error in declining the aforesaid prayer made by the petitioner. Accordingly, finding no merit in the present petition, the same is dismissed.

07.04.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No