
(2018) 08 P&H CK 0419

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 22099 Of 2016 (O&M)

Ajay Bangar

APPELLANT

Vs

State Of Punjab

RESPONDENT

Date of Decision : 14-08-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 311

Citation : (2018) 08 P&H CK 0419

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : Ankur Bansal, Simranjeet Kaur

Final Decision : Dismissed

Judgement

Gurvinder Singh Gill, J

By way of filing this petition, the petitioner assails order dated 19.5.2016 vide which the learned trial Court while accepting an application under Section 311 Cr.P.C., moved by the prosecution, has ordered for summoning of Constable Akhil Dutta to be examined as a prosecution witness.

The facts, in nutshell, are that the petitioner is facing trial for having been found in possession of 5 grams of 'heroin' and another 110 grams of narcotic powder allegedly containing 'Alprazolam'. One Constable Simarjit Singh was cited as a prosecution witness, whose statement under Section 161 Cr.P.C. had also been recorded to the effect that he had deposited the samples in the office of the Chemical Examiner, Kharar, Mohali (Punjab). However, when the said witness stepped into witness box, he deposed that on 6.6.2014, MHC Baljit Singh had handed over two sample parcels for depositing the same in the office of Chemical Examiner, Kharar, Mohali (Punjab) but since certain objections were raised by the office of chemical examiner, the same were not deposited in the office of Chemical Examiner, Kharar, Mohali (Punjab) and he handed back the said samples to MHC Baljit Singh. Subsequently, the prosecution filed an application under Section 311

Cr.P.C. for summoning Constable Akhil Dutta as a prosecution witness on the ground that in fact it was Akhil Dutta, who had deposited the sample parcels in the office of Chemical Examiner, Kharar, Mohali (Punjab) on 27.6.2014. The said application was opposed by the accused/petitioner but was ultimately allowed by the learned trial Court vide order dated 19.5.2016, which is being impugned by way of filing the present petition.

Notice of this petition was issued to the State.

The learned State counsel has opposed the petition.

The learned counsel for the petitioner has submitted that acceptance of the application under Section 311 Cr.P.C. would seriously prejudice the accused inasmuch as no statement of the said witness had ever been recorded in terms of Section 161 Cr.P.C. and that examining him at this stage would tantamount to filling up the lacunae. The learned counsel in order to hammer forth his aforesaid submission has placed reliance upon PS Dhansar, District Dhanbad (Jharkhand) Versus State of Jharkhand, 2016(4) JLJR 642 and Balwinder Singh alias Billa Versus State of Haryana, 2009(2) R.C.R. (Criminal) 730.

Having considered the aforesaid submissions, I do find that it is a case where the statement of the aforesaid witness sought to be examined i.e. Constable Akhil Dutta was not recorded in terms of Section 161 Cr.P.C. However, a perusal of the report of Forensic Science Laboratory shows that his name is specifically recorded in the report as the person who had deposited the samples in the laboratory on 27.6.2014 which lends an assurance to the effect that the said witness is not an introduced witness. Further, it is borne out from the testimony of Constable Simarjit Singh that it was on account of certain objections having been raised by the office of Chemical Examiner that the samples could not be deposited on 6.6.2014 and he had deposited back the samples with the MHC Baljit Singh on the same day. Though the investigating agency certainly ought to have been more careful and diligent in recording the statement of this witness Constable Akhil Dutta but there is no such hard and fast rule that a witness whose statement is not recorded in terms of Section 161 Cr.P.C. cannot be examined during the course of trial. It would be a matter of appreciation of evidence during the course of trial as to whether any such statement inspires confidence and should be accepted or not. The judgments relied upon by the learned counsel for the petitioner do not lay any straight jacket formula or any absolute law to the effect that a witness whose statement is not recorded in terms of Section 161 Cr.P.C. is not to be examined. It is for the Court to appreciate the veracity of statement of any such witness and would be best left to be examined at the stage of trial. The witness sought to be examined is a material witness and such evidence cannot be shut out from the trial. Rather the case of the prosecution would stand seriously prejudiced in case the application for leading such evidence is not accepted.

Finding no merit in the petition, the same is hereby dismissed.