
(2007) 11 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-48623 of 2007

Dinesh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 324

Citation : (2008) 1 RCR(Criminal) 128

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Advocate : Naveen Kaushik, for the Appellant;

Judgement

S.S. Saron, J.—This petition u/s 482 Code of Criminal Procedure has been filed praying for setting aside the order dated 29.8.2007 (Annexure-P.1) and the order dated 20.9.2007 (Annexure-P.2) passed by the learned trial Magistrate, Rewari. In terms of the said order the learned trial Magistrate has allowed the application of the Respondents u/s 311 Code of Criminal Procedure and an opportunity has been granted to examine three additional witnesses, namely, Dr. K.C. Mudgil, Dr. Sandeep Gupta and Dr. Namita Sharma.

2. The Petitioners are facing trial before the learned trial Magistrate at Rewari for the offences under Sections 147, 148, 149, 323, 324, 325 and 326 IPC read with Section 34 IPC for the last more than 8 years as the FIR in the case i.e. FIR No. 70 was registered on 13.4.1999. The learned trial Magistrate had closed prosecution evidence vide its order dated 30.3.2007. The arguments in the case were also heard before the trial Court and when the attention of the Court was drawn towards a material lacuna in the prosecution case, the Respondents filed an application u/s 311 Code of Criminal Procedure to examine additional witnesses so as to fill the lacuna. The said application has been allowed.

3. Learned Counsel for the Petitioners has submitted that even though one opportunity was granted to the prosecution to examine the additional witnesses,

however, the learned trial Magistrate is adjourning the case for their examination. It is submitted that in terms of the order dated 29.8.2007 (Annexure-P.1) one opportunity was granted to the prosecution to examine the aforesaid three witnesses. However, vide subsequent order dated 20.9.2007 another opportunity was granted and the case was adjourned to 18.10.2007. On 18.10.2007, it is submitted that another opportunity has been granted for 19.11.2007. He has placed on record the certified copy of the order dated 18.10.2007.

4. After hearing learned Counsel for the Petitioners and perusing the record, it may be noticed that in exercise of powers u/s 311 Cr.P.C., the Court may at any stage of the trial summon any person as a witness though not summoned as a witness or recall and re-examine any person already examined, if his evidence appears to the Court to be essential to the just decision of the case. Therefore, evidently the Court has been empowered to summon any person as a witness at any stage of the trial. The Court having exercised the jurisdiction in this regard would not warrant any interference in exercise of the inherent jurisdiction of this Court. However, it may be noticed that when the Court has itself granted one opportunity to examine the witnesses, therefore, granting of further opportunity may not be fully justified keeping in view the long pendency of the case. In any case, the trial Magistrate vide order dated 18.10.2007 has granted last opportunity and has observed that no further opportunity would be given. Therefore, it is hoped that the said orders are adhered to and in case the witnesses do not appear on the date fixed then no further opportunity is granted to the Respondents to examine them.

The criminal miscellaneous is accordingly disposed of.