

(2011) 05 P&H CK 0182
In the Punjab And Haryana At Chandigarh
Case No : C.R.M. No. M-11970 of 2011

Jagseer Singh alias Sonu alias Joga alias Davinder Singh	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 25-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311
Penal Code, 1860 (IPC) — Section 120B, 302, 34

Citation : (2012) 2 RCR(Criminal) 56

Hon'ble Judges : Nirmaljit Kaur, J

Advocate : Mr. Vivek Gael, Advocate., Advocates for appearing Parties

Judgement

Nirmaljit Kaur, J.

This is a petition under Section 482 Cr.P.C for setting aside the order dated 29.03.2011 (P3) passed by the Sessions Judge, Jalandhar, whereby, application under Section 311 Cr.P.C (P1) filed by the Additional Public Prosecutor was allowed in case FIR No. 30 dated 20.04.2010 under Sections 302/34/120B IPC registered at Police Station Lambra, District Jalandhar.

In the present case, the petitioner has challenged the order dated 29.03.2011 passed by the Sessions Judge, Jalandhar allowing the application under Section 311 of the Code of Criminal Procedure filed by the Additional Public Prosecutor. The Public Prosecutor had moved an application under Section 311 Cr.P.C for tendering handwritten documents and signature proof of the deceased. The said application was allowed.

Learned counsel for the petitioner, while challenging the order dated 29.03.2011 passed by the Sessions Judge, Jalandhar, contended that these documents were not part of the challan and hence, cannot be produced in evidence. Reliance is placed on the judgments rendered by the Hon'ble Supreme Court in the case of State of Rajasthan v. Daulat Ram reported as 1980 AIR (SC) 1314 and Bhagwan Singh v. State of Punjab reported as 1988 (1) as well as of our own High Court in the cases of Bhagwan Singh v. State of Punjab reported as 1988 (1) PLR 374 and

Madanjit Singh v. Baljit Singh reported as 1997 (2) RCR (Criminal) 808 . Heard.

The State has moved an application to place on record the hand writing in the shape of letter which is stated to be in the handwriting of Deceased Davinder Singh. Some of handwritten documents written by Amandeep Kaur are also found among the papers which bears the signatures of Amandeep Kaur. Learned Public Prosecutor prayed in the application that these papers were essential for the just decision of the case as the same show illicit relation between accused Amandeep Kaur and deceased Davinder Singh. The Sessions Judge, while allowing the application under Section 311 Cr.P.C, came to the conclusion that it was an offence under Section 302 IPC and these documents were necessary for the just decision of the case as the same were material documents for the said decision. It was further held that no prejudice would be caused to the accused as they will get an opportunity to cross examine the witness.

Section 311 of the Code of Criminal Procedure reads 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 its a witness, or examine any person in attendance, though not summoned as a witness, or recall and reexamine any person already examined; and the court shall summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case.?

A perusal of the same makes it clear that additional witness can be summoned even though he was not earlier summoned as a witness and if his evidence is essential for the just decision of the case. Judgment relied on by the learned counsel for the petitioner in the case of Bhagwan Singh to substantiate the argument that the documents which are not part of the challan cannot be produced under Section 311 Cr.P.C, was passed in view of the circumstance of that case. In that case, the challan was filed on presented on 27.03.1987. The arguments were heard on 19.10.1987 and it was thereafter, the said application was filed and while maintaining the balance, the Court held that it was at a belated stage. Whereas, in the present case, the prosecution evidence has yet not concluded.

Hon"ble the Supreme Court in the case of State of Rajasthan (supra), in some what similar circumstances, held that the Court cannot be allowed the prosecution to fill lacuna at the appellate or revisional stage. Whereas, Hon"ble the Supreme Court in the case of Hanuman Ram v. The State of Rajasthan and others 2008 (4) RCR (Criminal) 823 has, in fact, while interpreting the powers under Section 311 of Cr.P.C held that Section 311 Cr.P.C makes it mandatory for the Court to summon a witness in case the said witness was necessary for the just and proper decision to the facts of the present case. The Court further laid down the object underlying Section 311 of the Code, which reads as under:

77. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquires and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

Hon'ble the Supreme Court in the case of *U T of Dadra and Haveli and another v. Fatehsinh Mohansinh* reported as 2006 (4) Criminal Court Cases 24 (SC) held in no uncertain terms that recalling of a witness or reexamine a witness already examined in order to enable the Court to arrive at a just decision of the case will not amount to filling in a lacuna in prosecution case by observing as under:

12. A conspectus of authorities referred to above would show that the principle is well settled that the exercise of power under Section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof of such facts which lead to a just and correct decision of the case, this being the primary duty of a criminal court. Calling a witness or reexamining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be dubbed as "filling in a lacuna in prosecution case" unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused resulting in miscarriage of justice.

In the aforesaid judgment as well as in various other judgments on the subject, one of the requirements while allowing or not allowing the recalling of the witness is that the Court must make sure that the same does not result in miscarriage of justice.

The objection of the learned counsel for the petitioner that the same is only to fill a lacuna, is normally raised in each and every case. Normally, this is the only ground raised by the opposite side. In case, each application under Section 311 Cr.P.C is dismissed on this ground alone, a very purpose of Section 311 Cr.P.C would be defeated and same would become redundant. The same depends upon the facts of each case.

Coming back to the present case, the offence in the present case is under

Section 302 IPC. As the handwriting in the form of letter of Deceased Davinder Singh as well as the handwritten documents of accused Amandeep Kaur which have been found, are necessary to be produced for the just and proper decision of the case, it cannot be said that they will lead to miscarriage of justice as arriving at the truth is of paramount consideration.

Accordingly, the present petition is dismissed.