
(2013) 11 P&H CK 0094

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M- 20954 of 2013 (O and M)

Mangtu Ram

APPELLANT

Vs

Om Parkash and others

RESPONDENT

Date of Decision : 18-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0094

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Gurinder Pal Singh, for the Appellant; G.S. Sidhu, Advocate for Respondents Nos. 1 to 5 and Mr. Satyavir Singh Yadav, Addl. A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioner has filed this petition u/s 482 of the Code of Criminal Procedure, 1973 ("Cr. P.C." for short) challenging the order dated 3.4.2013 whereby application moved by the prosecution u/s 311 Cr. P.C. for conducting DNA test of the deceased, was dismissed. Learned counsel for the petitioner has vehemently argued that the Trial Court is not required to act as a mute spectator and should have allowed the application to arrive at a just decision of the case. In support of his argument, learned counsel has placed reliance on "Himanshu Singh Sabharwal versus State of M.P. and others, AIR 2008, Supreme Court 1943" wherein it was held as under:-

The Courts have to take a participatory role in a trial They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is

arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

2. Learned counsel for respondents No. 1 to 5, on the other hand, has submitted that in case application moved by the prosecution u/s 311 Cr. P.C. is allowed at this stage, it would amount to re-investigation of the case. In fact, entire prosecution evidence has already been concluded and now the case is listed before the Trial Court for recording of the statements of the accused u/s 313 Cr. P.C.

3. Learned State counsel, on the other hand, has supported the petitioner.

4. Section 311 Cr. P.C. 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 as 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 re-examine any such person if his evidence appears to it to be essential to the just decision of the case.

5. Thus, in view of the above provision, the Court may at any time recall and re-examine a person if his evidence appears to be essential for the just decision of the case.

6. In the present case, prosecution has concluded its evidence and now the case is listed before the Trial Court for recording of the statements of accused u/s 313 Cr. P.C. At this stage, application has been moved u/s 311 Cr. P.C. by the prosecution for directing the Civil Surgeon to take samples of either PW-4 or PW-5 and send the same to the concerned laboratory along with bones and teeth of deceased Vinod Kumar for conducting DNA test. In the present case, admittedly PW-4 and PW-5 have deposed in the Court qua identification of the dead body. Hence, at this stage, the application moved by the prosecution u/s 311 Cr. P.C. would, in fact, amount to permission to re-investigate the case. In these circumstances, the learned Trial Court rightly dismissed the application moved by the prosecution u/s 311 Cr. P.C. There is no quarrel with the proposition of law settled by the Apex Court in Himanshu Singh Sabharwal's case (supra) but the said decision fails to advance the case of the petitioner.

7. No ground for interference is made out. Dismissed.