

(2020) 10 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 1802 Of 2020 (O&M)

Neeru Rani

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 311, 482

Citation : (2020) 10 P&H CK 0033

Hon'ble Judges : Manjari Nehru Kaul, J

Bench : Single Bench

Advocate : Dinesh Nagar, Amardeep S. Gill., Yogesh Goel

Final Decision : Dismissed

Judgement

Manjari Nehru Kaul, J

Due to the outbreak of pandemic COVID-19, the instant case is being taken up for hearing through video conferencing.

The instant petition has been filed under Section 482 Cr.P.C. to impugn the orders dated 06th December, 2019 and 20th December, 2019 (Anexures P-3 & P-4, respectively), vide which the trial Court at Ludhiana dismissed application under Section 311 Cr.P.C. stated to have been filed on 01st February, 2019 (Annexure P-1) by the petitioner (complainant) seeking her re-examination and thereafter closed the prosecution evidence by order.

It would be worthwhile to mention that at the time of issuance of notice of motion on 16th January, 2020, it was submitted by the learned counsel for the petitioner that the petitioner after being threatened by police officials to compromise the matter with the accused or else be ready to face dire consequences, had been compelled to turn hostile, subsequent to her examination-in-chief before the trial Court. It had been further submitted by the learned counsel for the petitioner that soon after the conclusion of her evidence, the petitioner had mustered the courage to speak out the truth and precisely for

this reason, she moved an application under Section 311 Cr.P.C. on 01st February, 2019 (Annexure P-1), wherein, she spelt out the circumstances, which had led her to turn hostile and thus prayed for her re-examination. It was also urged by the learned counsel that the application under Section 311 Cr.P.C. was decided on 06th December, 2019 (Annexure P-3) i.e. after nine months of the the application (Annexure P-1) having been moved and during the intervening period, remaining prosecution witnesses were examined and thereafter, evidence of the prosecution was ordered to be closed by the trial Court on 20th December, 2019. As the learned counsel for the petitioner prima facie made out a case and more so, after taking into account the delay in deciding the application under Section 311 Cr.P.C. by the trial Court, this Court while issuing notice of motion on 16th January, 2020, directed that the judgment by the trial Court would remain stayed.

The respondent-accused meanwhile approached this Court for grant of regular bail vide CRM-M-17908-2020, which was then ordered to be listed along with the instant petition vide order dated 04.08.2020. On entering appearance learned counsel appearing for the respondent-accused placed on record the zimni orders of the proceedings before the trial Court, which revealed an altogether different story and were, in fact, totally contrary to the submissions made by the learned counsel for the petitioner.

It was submitted by the learned counsel for the respondent that a perusal of the zimni orders so placed on record clearly reflected that in fact, there had been no delay by the trial Court in deciding the application filed on 02nd December, 2019, under Section 311 Cr.P.C. by the petitioner, as the same was decided within four days of its filing i.e. on 06th December, 2019. It was further argued that the aforementioned application was moved by the petitioner after nine months of the conclusion of her evidence and after that evidence had been closed by order by the trial Court, which made it abundantly clear that it had been moved with the sole objective to delay the conclusion of the trial.

Heard learned counsel for the parties and gone through the material on record.

On a perusal of the zimni orders, it transpires that the application under Section 311 Cr.P.C. was moved by the petitioner only on 02nd December, 2019 and not on 01st February, 2019, as had been pleaded by the learned counsel for the petitioner on the date when the notice of motion was issued. Further, a perusal of the zimni orders clearly reveals that the aforementioned application was decided by the trial Court without any delay on 06th December, 2019.

When confronted with the contradictions qua the dates pertaining to the filing of the application under Section 311 Cr.P.C. and its final disposal by the trial Court, learned counsel for the petitioner was unable to controvert the same and pleaded that he had made his submissions, as instructed by his client i.e. the petitioner. Rather, he conceded that the application under Section 311 Cr.P.C. was filed by the petitioner only on 02nd December, 2019, as rightly reflected in the zimni

orders so filed by the learned counsel for the respondent.

No doubt, a lawyer makes his submissions on the basis of the instructions given to him by his client, however, the least which a counsel is required to do as an Officer of the Court, is to verify the authenticity of the documents provided to him by the client before attesting them to be true copies. In the instant case, learned counsel for the petitioner duly attested the documents to be true copies. Hence, he cannot escape his liability by passing on the blame entirely on his client/petitioner. Learned counsel for the petitioner has expressed his profound apology for this lapse on his part, which he submits was unintentional. This Court expresses its strong displeasure over the conduct of the learned counsel for the petitioner, which on the face of it is unpardonable and reflects his lackadaisical and improper approach.

However, in view of the apology tendered by the learned counsel for the petitioner, this Court does not wish to proceed against him, however, the counsel is advised and warned to be more cautious and responsible in future.

Adverting to the merits of the case, no doubt, the powers of a Court under Section 311 Cr.P.C. are very wide, however, these powers should be exercised sparingly and with a great deal of circumspection. Since the underlying object of Section 311 Cr.P.C. is to arrive at a just decision of a case, hence, it becomes all the more imperative that the Court must take into account all the circumstances in their totality before deciding an application under Section 311 Cr.P.C.

In the case in hand, the evidence of the petitioner concluded on 21st December, 2018. A perusal of the zimni orders, placed on record by the learned counsel for the respondent reveals that not only was the petitioner duly represented by a counsel during the course of the hearings, but she remained present in the Court on a number of hearings as well, during the course of the trial. After her evidence had been concluded, the evidence of the remaining prosecution witnesses was recorded over a period of time stretching almost 11 months. It does not appeal to reason as to what prevented the petitioner from apprising the Court or even her counsel about the alleged threat perception. The least that the petitioner could have done was to at least apprise her counsel, which admittedly she did not do. Her submission that she mustered courage soon after her evidence concluded on 21st December, 2018, to speak out the truth is belied from the material on record, as admittedly the application under Section 311 Cr.P.C. was filed only on 02nd December, 2019 i.e. after nine months of the conclusion of her evidence.

In the facts and circumstances as already detailed above, this Court does not find any cogent reason to interfere with the well reasoned orders dated 06th December, 2019 and 20th December, 2019 (Annexures P-3 & P-4, respectively), passed by the trial Court.

Accordingly, the instant petition stands dismissed. The stay granted by this Court vide order dated 16th January, 2020 stands vacated. The trial Court is directed to

proceed with the trial and conclude the same expeditiously preferably within two months from the date when normal Court functioning resumes before the Courts below.