
(2011) 07 P&H CK 0141

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 552 of 2011 (O&M)

Prem Kumar @ Kala

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311

Citation : (2012) 1 RCR(Criminal) 383

Hon'ble Judges : Mahesh Crover, J

Advocate : Mr. Anant Kataria, Advocate, Mr. B.B.S. Teji, Sr. DAG, Haryana.,
Advocates for appearing Parties

Judgement

Mahesh Grover, J.

This revision petition is directed against the order dated 21.2.2011 of the Trial Court (Special Judge) Faridkot. The prayer of the petitioner for giving his specimen handwriting for comparison with the disputed documents and files relied upon by the prosecution has been declined by learned Trial Court under Section 311Cr.P.C which ostensibly was invoked by the petitioner with the aforesaid prayer.

The reason given by the learned Trial Court is two fold; one that the petitioner had made a statement before the Executive Magistrate on 30.4.2004 refusing to give his specimen signatures and that the application has been moved belatedly in an attempt to delay the proceedings.

Learned counsel for the petitioner contends that the factors which are weighing with the learned Trial Court are not relevant for the purposes of this controversy and the provisions of Section 311 Cr.P.C are to be construed liberally in the interest of the proper adjudication of the matter and that further the Executive Magistrate was not empowered to deal with the comparison of the signatures and such a power lay purely within the domain of Judicial Magistrate. Reliance has been placed on Krishan Vs. State of Haryana reported as 1978 CLR (Pb.& Hy) 53

wherein this Court dealing with a situation where the Executive Magistrate has dwelt upon a similar situation involves the specimen signatures the Court observed that during the course of inquiry or trial it is only the Judicial Magistrate who could exercise such a power and Executive Magistrate has no jurisdiction to do so. Besides this, it has been contended that exercise of powers under Section 311 Cr.P.C cannot be denied on the ground that it is likely to cause delay.

On due consideration of the matter that I am of the considered opinion that serious infirmity has been committed by the learned Trial Court. Section 311 Cr.P.C is extracted herebelow:

Section 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 reexamine any such person if his evidence appears to it to be essential to the just decision of the case.

It is evident therefrom that powers under Section 311 Cr.P.C are of wide amplitude and can be exercised by the Court in the interest of ensuring proper decision of the case. The stage and the manner in which it is moved is a consideration of far less importance than the primary consideration of ensuring proper adjudication of the case. Since no such expression has been made by the learned Trial Court regarding the attempt of the petitioner to give his specimen signatures for comparison with those appearing on the disputed documents, I am of the considered opinion that the impugned order deserves to be set aside and the matter remitted back to the Trial Court for decision afresh by applying provisions of Section 311 Cr.P.C as they are intended to be and as per the scope expressed by the Hon'ble Supreme Court in *Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others* 2004 SCC (Cri.) 999 wherein it has observed as under:

44. The power of the Court under Section 165 of the Evidence Act is in a way complimentary to its power under Section 311 of the Code. The Section consists of two parts i.e: (i) giving a discretion to the Court to examine the witness at any stage, and (ii) the mandatory portion which compels the Court to examine a witness if his discretion given to the Court is very wide, the very width requires a corresponding caution. In *Mohanlal Vs. Union of India* this Court has observed, while considering the scope and ambit of Section 311, that the very usage of the words such as 'any Court', 'at any stage', or 'any enquiry or trial or other proceedings', 'any person' and 'any such person' clearly spells out that the Section has expressed in the widest possible terms and do not limit the discretion of the court in any way. However, as noted above, the very width requires a corresponding caution that the discretionary powers should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the Section

does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, 'essential' to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produced some evidence which is necessary for a just and proper disposal of the case. The power is exercised and the evidence is examined neither to help the prosecution nor the defence, if the Court feels that there is necessity to act in terms of Section 311 but only to subserve the cause of justice and public interest. It is done with an object of getting the evidence in aid of a just decision and to uphold the truth.

46. Ultimately, as noted above, ad nauseam the duty of the court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer on any party any right to examine, crossexamine and reexamine any witness. This is a power given to the court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by courts to power under this Section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.?

Similarly, the Apex Court in *Zahira Habibullah Sheikh (5) and another Vs. State of Gujarat and others* (2006) 2 SCC (Cri.) 8 observed as follows:

'29. The object of Section 311 is to bring on record evidence not only from the point of view of the accused and the prosecution but also from the point of view of the orderly society. If a witness called by the Court gives evidence against the complainant, he should be allowed an opportunity to crossexamine. The right to crossexamine a witness who is called by a court arises not under the provisions of Section 311, but under the Evidence Act which gives a party the right to crossexamine a witness who is not his own witness. Since a witness summoned by the Court could not be termed a witness of any particular party, the Court should give the right of cross examination to the complainant. These aspects were highlighted in *Jamatraj Kewalji Govani Vs. State of Maharashtra*.?

In view of the above, the petition is accepted, impugned order is set aside and the matter is remitted back to the learned Trial Court to decide the issue afresh.

Disposed of.