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(1996) 03 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 605 of 1995

Budh Ram	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision: March 20, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 313
- Penal Code, 1860 (IPC) - Section 302, 34, 460

Citation: (1996) CriLJ 3356 : (1996) 2 RCR(Criminal) 270

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: M.S. Rakkar and A.S. Syau, for the Appellant; Amar Vivek, AAG, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Swatanter Kumar, J.
This revision petition is directed against the order of the learned Additional Sessions Judge, Patiala, dated 21-7-1995 whereby he allowed recalling of PW Gurdeep Singh and permitted his further statement to be recorded. The statement of the said witness has not been recorded in view of the stay granted by this Court.

2. The facts as emerge from the records are that the petitioner and respondents No. 2 to 6 in this " petition, were facing a trial under Sections 460,302 read with Section 34 I.P.C. under F.I.R. No. 107 dated 14-8-1991. The prosecution evidence was in progress and the statement of PW Gurdeep Singh was recorded on 9-5-1995. Ultimately, prosecution evidence was closed on 10-7-1995. Thereafter the accused were put into witness box for recording their a statements u/s 313 of Criminal Procedure Code, hereinafter referred to

as the Code, on 1lth, 12th and 14th of July, 1995, respectively. The prosecution then filed application on 14-7-1995 praying that Gurdeep Singh may be recalled for further examination in the interest of justice. The learned trial Court vide the impugned order allowed the stay application and permitted the recalling of Gurdeep Singh for recording of his further statement. The petitioner is aggrieved from this order.

3. The main ground urged by learned counsel for the petitioner is that great prejudice will be caused to the accused because they have already disclosed their entire defence in recording their statements u/s 313 of the Code and the reasons given in the application do not constitute a sufficient ground within the meaning and perview of the provisions of Section 311 of the Code. On the other hand, learned counsel for the State submits that the order is well founded and has been passed to achieve the ends of justice.

4. Having heard the counsel for the parties at some length it is important to refer to the fact that the application for recalling PW Gurdeep Singh appears to have been typed on 9-5-1995, much prior to the date even when the prosecution evidence was closed and the accused were called upon to enter their defence upon regarding their statements u/s 313 of the Code, though this application was filed in the Court admittedly on 14-7-1995 after the afore-stated proceedings have already been taken before the Court. There is no doubt that the powers of the Court u/s 311 of the Code are very wide and specifically empowers the Court to summon a witness or re-examine any person who has already been examined. The basic criterion which is of consideration before the Court in passing such an order is that it is essential to the just decision of the case. Thus the evidence has to be essential for the purposes of delivering a just decision of the case and the mere negligence and carelessness on the part of a party cannot constitute a ground which will fall within the ambit and scope of this section. Paragraphs No. 2 and 3 of the said application read as under:-

2. That on 9-5-95 PW Gurdeep Singh was examined who was material witness before whom the accused made extra judicial confession.

3. That inadvertently his full evidence could not be recorded.

The Court fails to see any reason that inadvertence admitted by a party clubbed with an absolute callousness in not presenting the application before the Court practically for a period of more than two months cannot be said to be a ground which would call for orders from the Court granting such permission. Nothing has been stated or argued before me to justify the said delay. Thus, the conduct of the prosecution certainly lacks bona fides and even the reasons stated in the application cannot be termed as sufficient reasons for invoking the power of the Court u/s 311 of the Code.

5. There is also substance in the other contention raised by learned counsel for the petitioner that the prosecution, as an afterthought, is now trying to fill up the lacunas in its case and especially when the accused have already disclosed their defence. He further

submits that by way of the impugned order serious prejudice is inevitable to the defence of the accused. I find that the said two submissions are well founded. The accused has a fight to make statement u/s 313 of the Code where in the entire prosecution evidence on record against the accused has to be put to him and he has the right to say what be considers appropriate while the said statement is being recorded. The accused practically discloses his defence in that statement. Prejudice to the defence of an accused resulting from slackness or carelessness on the part of the prosecution cannot be permited in view of the settled principles of criminal jurisprudence. In this regard reference can be made to the observations of Hon"ble the Supreme Court in the case of Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, which reads as under (Para 4):-

The prosecution had been made afforded a full and complete opportunity at the trial stage to produce whatever material it liked and it had chosen to examine two witnesses but for reasons best known to it did not produce the note, which formed the subject-matter of the Resolution of the Sanctioning Authority - Exh. P-16. It is well settled that in a criminal case this Court or for that matter any court should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution. The liberty of the subject was put in jeopardy and it cannot be allowed to put in jeopardy again at the instance of the prosecution which failed to avail of the opportunity afforded to it."

Learned counsel for the petitioner also relies upon a judgment of this Court in the case of Jagdish Chander v. State of Haryana (1983) 2 CLR 432.

6. In the present case the learned trial Court has misdireted itself to use the term "but of doing complete justice between the parties". The expression to do complete justice between the parties cannot be equated to the term used in Section 311 of the Code to just decision of the case. The powers u/s 311 of the Code being wide require a greater caution to be exercised by the Courts. Invocation of the provisions of Section 311 of the Code presupposes valid and good reasons for specially recalling a witness for further examination and also such examination as a matter of fact must be considered by the Court as essential to the just decision of the case. Thus, the power under this Section may not be permitted to be invoked on the mere asking. The accused who faces trial for a considerable period cannot be reverted back to the original position by induction of further statements which the prosecution was obliged to prove at the first instance when it got full and complete chance to lead evidence. In the present case the witness was produced only for the purposes of proving extra-judicial confession(s) made by two of the accused to him (Gurdeep Singh). This fact itself was not put to him when he was in the witness box. As already noticed, application was unnecessarily delayed and ultimately the accused are bound to suffer prejudice to their defence if the said order is permitted to stand. At this stage reference can be made to the judgment of Supreme Court in Mohanlal Shamji Soni Vs. Union of India and another, where the Court held as under (Para 9):

However, the very width requires a corresponding caution that the discretionary power 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 for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case.

7. In view of the reasons aforestated this petition succeeds. Consequently, the impugned order dated 2-1-7-1995 is set aside. Now the trial Court is directed to proceed with the matter in accordance with law.