Balwinder Singh Vs State of Punjab and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 18, 2009

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 311, 482

Citation: (2009) 32 CriminalCC 152 : (2010) 1 RCR(Criminal) 909

Hon'ble Judges: George Masih, J

Bench: Single Bench

Advocate: Puneet Sharma, for the Appellant; A.S. Rai, A.A.G. Punjab For the Respondent Nos. 2 to 5. Mr. P.S. Khurana, for the Respondent

Judgement

Augustine George Masih, J.
This petition u/s 482 Cr.P.C. has been preferred by the petitioner/complainant, praying for quashing of order

dated 28.05.2009 (Annexure-P-6), passed by the learned Sessions Judge, Rupnagar, vide which application u/s 311 Cr.P.C., preferred by the

petitioner/complainant for permission to place on record the statements recorded by Investigating Officer u/s 161 Cr.P.C. of Gurdev Singh

injured/eye witness and Tejwinder Singh injured, which were inadvertently not filed alongwith the police report submitted u/s 173 Cr.P.C. and to

lead additional evidence stand dismissed.

2. An F.I.R. No. 96 dated 20.08.2008 under Sections 307/326/34 I.P.C., Police Station Chamkaur Sahib, came to be registered against the

accused/respondents on a statement made by the petitioner/complainant Balwinder Singh @ Sangat Singh son of Bishan Singh, which was

recorded in Civil Hospital, Chamkaur Sahib, wherein intimation was received on 20.08.2008 regarding admission of injured Balwinder Singh in the

hospital. On 19.08.2008, injured Balwinder Singh (petitioner/complainant) was declared unfit to make any statement by the Medical Officer. The

respondents/accused with an intention to cause death to Balwinder Singh (petitioner/complainant) caused injures on his person, while he was going

for a walk on Sirhind Canal in the area of Chamkaur Sahib at about 08:00 P.M. on 19.08.2008, for the reason that the accused/respondents had

tried to outrage the modesty of the daughter of his friend, namely, Sadhu Singh, resident of Mohalla Raiwara, Chamkaur Sahib, as the

complainant/petitioner helped him. Gurdev Singh son of Hari Singh, a passerby tried to rescue injured Balwinder Singh on hearing the alarm raised

by the petitioner/complainant Balwinder Singh. The accused/respondents also caused injuries on the person of Gurdev Singh, and, thereafter,

accused/respondents threatened the petitioner/complainant Balwinder Singh and eye witness Gurdev Singh that he had been taught a lesson and

now they are going to teach a lesson to his other associate Teja @ Tejwinder Singh as they both had objected to accused/respondents, while

misbehaving with Gurjinder daughter of Sadhu Singh, who is a friend of petitioner/complainant Balwinder Singh. Thereafter, the assailants went

towards the house of Teja @ Tejwinder Singh, who was also way laid in the street at a short distance of less than 100 yds and grievous injuries

were caused to Teja @ Tejwinder Singh on the vital parts of the body with a sharp edged weapon. Teja @ Tejwinder Singh was treated in Post

Graduate Institute of Medical Education, and Research, Chandigarh, since he had suffered fractures on the vital organs. The Investigating Officer

recorded the statements and collected the M.L.Rs./Medical Case Summaries of the injured Balwinder Singh (petitioner/complainant) and Gurdev

Singh (eye witness) in the first case diary itself. On completion of investigation of the case, the Station House Officer, Police Station Chamkaur

Sahib, submitted police report u/s 173 Cr.P.C. against the accused/respondents under Sections 307/326/34 I.P.C. before the learned Area

Magistrate on 18.11.2008. One of the accused, namely, Paramjot Singh @ Popan (respondent No. 2 herein) could not be arrested and he was

proceeded against under Sections 82/83 Cr.P.C. In the police report u/s 173 Cr.P.C., submitted against the accused/respondents, M.L.Rs. of all

the injured alongwith other relevant documents and copy of statements recorded u/s 161 Cr.P.C. were attached in support of report u/s 173

Cr.P.C. Inadvertently, copy of the statements recorded u/s 161 Cr.P.C. of Gurdev Singh and Teja @ Tejwinder Singh, were not attached with the

challan report, though, names of these two injured/eye witnesses were mentioned in the list of witnesses at Serial. No. 2 and 3 attached with the

police report. Accused/respondent No. 2 Paramjot Singh @ Popan surrendered before the learned Trial Court on 18.11.2009, and he was

arrested in the case. Supplementary challan was presented against him and thereafter, the learned Area Magistrate committed the case to the Court

of Session, Rupnagar.

3. The charges were framed on 17.03.2009 against the accused/respondents under Sections 307/34 I.P.C., but charges under Sections 323/326

I.P.C. were not framed against the accused/respondents, despite grievous injuries on the vital parts of Balwinder Singh (petitioner/complainant)

and on the person of Gurdev Singh, were found. When the case was fixed for prosecution evidence after framing of charge, the prosecution and

the petitioner/complainant realised, at that stage, that the statements of eye witness/injured Gurdev Singh and Teja @ Tejwinder Singh, have

inadvertently not been attached with the police report submitted u/s 173 Cr.P.C. by the police.

4. Accordingly, an application for additional evidence u/s 311 Cr.P.C., was submitted by the petitioner/complainant, wherein it was pleaded that

the F.I.R. was registered on the statement of Balwinder Singh (petitioner/complainant). In the said statement, it was specifically mentioned that the

injuries upon Gurdev Singh and Tejwinder Singh were inflicted by the accused/respondents. At the time of presentation of the challan, the names of

Gurdev Singh and Tejwinder Singh, were cited in the list of witnesses being eye witnesses/injured and their medico legal reports were also placed

on record. However, inadvertently the statements u/s 161 Cr.P.C. during investigation of eye witnesses/injured, namely, Gurdev Singh and

Tejwinder Singh, could not be placed with the challan and this fact came to the knowledge of prosecution at the time of examination of the

witnesses. The said statements by mistake, are lying in the police file and the prosecution intends to place the said statements on record file. No

prejudice would be caused to the accused/respondents by placing the said statements on record, but in case the application is not allowed, the

prosecution will suffer irreparable loss.

The said application was opposed by the accused/respondents and the ground taken therein was that the said application was not maintainable and

the same has been filed only to fill up the lacuna left by the prosecution. There is no question of inadvertent mistake, as at various stages, the

prosecution had taken caution to rectify its mistake, which it fails to do and now at this belated stage, application u/s 311 Cr.P.C. could not be

allowed. On consideration of the respective submissions made by the parties and their counsel, the learned Sessions Judge, Rupnagar, proceeded

to reject the application preferred by the petitioner/complainant u/s 311 Cr.P.C., vide order dated 28.05.2009 (Annexure-P-6), which has led to

the filing of the present petition by the petitioner/complainant challenging the same.

5. Counsel for the petitioner/complainant contends that an inadvertent mistake, which had occurred during the presentation of report u/s 173

Cr.P.C., wherein through oversight, statements of two eye- witnesses/injured, namely, Gurdev Singh son of Hari Singh and Teja @ Tejwinder

Singh son of Rattan Singh, could not be attached with the report, although, both of them were cited as eye witnesses/injured and their medico legal

reports were attached with the report. He on this basis submits that, as a matter of fact, both the witnesses were injured in the incident. He has

referred to the medico legal reports of Gurdev Singh and Teja @ Tejwinder Singh (Annexure-P-9 and Annexure-P-10 (colly) respectively) to

show that grievous injuries were received by both of them at the hands of the accused/respondents. Their names as injured and eyewitnesses to the

incident find mention in the F.I.R. itself, which was recorded on the statement of the petitioner/complainant. He contends that the learned Sessions

Judge, Rupnagar, had proceeded to reject the application, merely on technicalities and had totally overlooked the intent and purpose for which

Section 311 Cr.P.C. has been incorporated. There is no lacuna in the case of the prosecution, which is being sought to be filled up, as a matter of

fact, the mistake is a bonafide mistake, which needs to be condoned and rectified, so that justice should not be a casualty and truth should prevail.

6. In support of his contentions, he relies upon the provisions of Section 311 Cr.P.C. as also the judgment of Hon"ble the Supreme Court in the

case of Rajendra Prasad v. The Narcotic Cell through its Officer-Incharge, Delhi, 1999 (3) R.C.R. (Cri) 440, wherein Hon"ble the Supreme

Court has held that the lacuna and error are two distinct things and oversight in the management of prosecution, cannot be tried as a reasonable

lacuna and no party in a trial can be fore-closed from correcting errors and inadvertent errors should be permitted to be rectified by the Court,

while exercising its power u/s 311 Cr.P.C. He on this basis prays for allowing the present petition and setting aside the order dated 28.05.2009

(Annexure-P-6), passed by the learned Sessions Judge, Rupnagar.

7. Reply on behalf of respondent No. 1-State has been filed. In the said reply, which is in the form of an affidavit, wherein factum of recording

statements of Gurdev Singh son of Hari Singh and Teja @ Tejwinder SIngh son of Rattan Singh by the Investigating Officer on 20.08.2008. is

admitted. It has further been admitted that inadvertently copies of statements recorded by the Investigating Officer u/s 161 Cr.P.C., were not

attached with the report submitted u/s 173 Cr.P.C. It is also admitted that the said statements were available on the police file. The prosecution has

fully supported the application, moved u/s 311 Cr.P.C., by the complainant/petitioner. The statements of Gurdev Singh son of Hari Singh and Teja

@ Tejwinder Singh son of Rattan Singh (Annexure-P7 and Annexure-P-8) as placed on record in the present petition, as also the copies of the

medico legal reports of Gurdev Singh and Tejwinder Singh as Annexure-P-9 and Annexure-P-10 (colly), are admitted.

8. No reply on behalf of accused/respondents No. 2 to 5 has been filed in the Court. On 09.10.2009, counsel for respondents No. 2 to 5 had

made a statement in the Court that he does not want to file reply to the petition and accordingly, the case was adjourned for arguments.

9. Counsel for respondents No. 2 to 5 submits that the application u/s 311 Cr.P.C., preferred by the petitioner/complainant is not maintainable as

it is only the Public Prosecutor, who could prefer an application u/s 311 Cr.P.C. He refers to Section 301 (1)(2) Cr.P.C. and submits that,

although, permission may be granted to a counsel to assist the Public Prosecutor, but the Public Prosecutor still holds the reins of the case and right

to move an application u/s 311 Cr.P.C. in a case is only available to the Public Prosecutor and none else. In support of his contention, he relies

upon the judgment of Kerala High Court in the case of Somasundaram v. Chandra Bose, 2001 (2) R.C.R. (Cri), 830. He contends that by way of

application u/s 311 Cr.P.C., the prosecution is trying to fill up the lacuna, which would not be permissible in law. Grave prejudice would be caused

to the accused/respondent in case at this stage the present application is allowed. He relies upon the judgment of this Court in the case of Madanjit

Singh v. Baljit Singh, 1997 (2) R.C.R. (Cri), 808, in support of his contention that the lacunae of the prosecution in a criminal case cannot be

allowed to be filled up under the grab of an application u/s 311 Cr.P.C. In any case, there is no mistake much less inadvertent, while presentation

of challan against the accused/respondents and the contention of prosecution cannot be accepted. As per practice and procedure, before

presentation of challan in the Court, the same is duly checked by the prosecuting agency and thereafter, it is committed to the Court of Session by

the learned Area Magistrate. The prosecution, at that stage, had an opportunity to go through the challan papers. Thereafter, before the Court of

Session, when the charge was framed, again an opportunity was available with the prosecution to examine the names of witnesses and their

statements recorded u/s 161 Cr.P.C., but the prosecution failed to detect the same and nor did make any effort to take any steps to place the

statements of Gurdev Singh and Tejwinder Singh allegedly recorded u/s 161 Cr.P.C. by the Investigating Officer. That apart, the statements having

not been attached with the report u/s 173 Cr.P.C. and having not been supplied to the accused/respondents, their rights have been adversely

prejudiced and, therefore, the present application had been rightly rejected by the learned Sessions Judge, Rupnagar,, vide order dated

28.05.2009 (Annexure-P-6). His further submission is that, vide order dated 28.05.2009 (Annexure-P-6), the learned Sessions Judge, Rupnagar,

had, apart from application u/s 311 Cr.P.C., rejected the application preferred by the petitioner/complainant u/s 216 Cr.P.C. for altering and

adding charge. This application has not been challenged by the petitioner/complainant and the same has attained finality and for this reason, the

present petition deserves to be dismissed.

10. I have heard counsel for the parties and with their able assistance have gone through the records of the case.

11. The facts are not in dispute. The assertions as made in the present petition on the factual aspect by the petitioner/complainant has been

admitted by respondent-State on the basis of records. The accused/respondents No. 2 to 5 have preferred not to file reply to the present petition,

and, thus, have not contradicted and disputed the factual aspects as asserted by the petitioner. What, therefore, comes out of the factual gamut is

that statements of Gurdev Singh son of Hari Singh and Teja @ Tejwinder Singh son of Rattan Singh u/s 161 Cr.P.C. were indeed recorded by the

Investigating Officer and are available on the police file. The statements so recorded have been placed on record as Annexure-P-7 and Annexure-

P-8 respectively. The medico legal reports of Gurdev Singh and Teja @ Tejwinder Singh are on records as Annexure-P-9 and Annexure-P-10

respectively (colly). It is not in dispute that names of Gurdev Singh son of Hari Singh and Teja @ Tejwinder Singh son of Rattan Singh find

mention in the list of eye witnesses at Serial No. 2 and 3. The medico legal reports of Gurdev Singh and Teja @ Tejwinder Singh (Annexure-P-9

and Annexure-P-10 respectively (colly)) support the factum of they were injured as the date of admission of Gurdev Singh at Civil Hospital,

Chamkaur Sahib, is 19.08.2008 and that of Teja @ Tejwinder Singh is also on 19.08.2008 at P.G.I. Chandigarh. The statements of Gurdev Singh

was recorded by the Investigating Officer at Civil Hospital, Chamkaur Sahib, on 20.08.2008 and that of Teja @ Tejwinder Singh in P.G.I. at

Chandigarh, on 20.08.2008 and on the same date, M.L.R./Medical Case Summary of the injured were collected by the Investigating Officer, as

per reply filed by respondent No. 1-State. The application u/s 311 Cr.P.C. has been preferred by the petitioner/complainant at the very initiation

of the prosecution evidence, when it was realised by the petitioner/complainant and the prosecution that inadvertently statements of Gurdev Singh

and Teja @ Tejwinder Singh recorded u/s 161 Cr.P.C. by the Investigating Officer have not been attached with the report u/s 173 Cr.P.C. A

perusal of Section 311 Cr.P.C. would clearly indicate that it is a discretionary power of the Court to exercise the same at its discretion and enables

it at any stage of inquiry, trial or proceeding under the Code to summon anyone as a witness or examine any person present in the Court or recall

or re-examine any person whose evidence has already been recorded. It further provides and rather mandates the criminal court to summon,

examine, recall or re-examine any of the persons as mentioned, if his evidence appears to the Criminal Court to be essential for the just decision of

the case. This Section gives all powers to the Court without any fetters being put on it with regard to the stage and the manner in which it should be

exercised. It is not only the prerogative and the power of the Criminal Court, but also enjoins duty on the Court to seek and arrive at the truth and

do the justice.

12. At this stage Section 311 Cr.P.C. needs to be reproduced, which reads as follow :-

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 or re- examine 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.

13. This Court, while considering the ambit and scope of Section 311 Cr.P.C. in the case of Jagdish and another v. State of Haryana, Criminal

Revision No. 2547 of 2009, decided on 25.09.2009, has held as follows :-

The Section when read as reproduced above, clearly shows that this provision gives ample powers to the Court to recall, summon, or re-examine

any person in evidence, if it appears to be essential to the just decision of the case. The powers of the Court are wide enough to exercise its

discretion depending upon the facts and circumstances of each case and it is to the satisfaction of the Court and to see that cause of justice should

not suffer. The primary aim and object of this Section is to do justice between the parties. If the Court comes to a conclusion that the production of

such evidence, which has been sought to be produced taking recourse to Section 311 Cr.P.C., would enable the Court to come to a correct

finding, it would be just and reasonable and the Court would be fully justified in permitting the evidence to be produced under this Section. This

Section does not distinguish and rather allows production of evidence whether documentary or oral, which the Court feels is necessary for the just

decision of the case and no fetters and impediments can be put in exercise of these powers, which has been conferred by the Legislature on the

Trial Court. The Court cannot dilute the statutory powers conferred upon the Trial Court, when the Legislature did not intend to do so. Justice

should not be the sufferer. The purpose and intent of the trial is to find out the truth and the truth alone should prevail and in its quest to find out and

to reach the truth, the Trial Court has been saddled with powers to make all efforts to reach a correct conclusion, which is the truth. No doubt, in

the said process, the interest of the parties has to be taken care of, but that does not mean that justice should be the casualty. The rights have been

conferred under the statute both on the prosecution as well as the accused and when the statute confers certain powers upon the Court, which is

primarily in the nature of doing justice and for that it is the satisfaction of the Court as to the essentiality of the evidence, sought to be produced by

the parties for the just decision of the case, the same is depending upon the facts of each case.

14. Thereafter, this Court in the case of Dr. Gurpreet Kaur v. Appropriate Authority-cum-Senior Medical Officer, Incharge Sub-Division

Hospital, Tehsil Phillaur (Jalandhar), being CRM M-17027 of 2009, decided on 04.12.2009, has held as follows :-

A perusal of the above provision shows that it is a discretion provided to the Court, where any inquiry, trial, or other proceedings under the Code

is pending, the Court has been given wide powers to recall or re- examine any person already examined, if his evidence appears to the Court to be

essential for the just decision of the case. The satisfaction is, therefore, of the Court, which has to decide the matter pending before it. The

touchstone for exercise of powers u/s 311 Cr.P.C. is the satisfaction of the Court that the evidence of any person, which comes to its notice, is

essential for the just decision of the case. It can at that stage summon any person as witness, examine any person in attendance, though not

summoned as a witness or recall or reexamine any person already examined. This power, u/s 311 Cr.P.C., can be exercised by the Court at any

stage of any inquiry, trial, or other proceedings under the Code of Criminal Procedure. The intention of the Legislature is to empower and enable

the Court to come to a correct finding and for that reason, the Court would be fully justified in permitting production of evidence whether

documentary or oral, where the Court feels that the same is necessary for the just decision of the case and no fetters can be put in exercise of these

powers of the Court. The cause of justice is paramount and no impediment has, therefore, been intentionally put on the Court by the Legislature to

exercise the powers u/s 311 Cr.P.C."" 14. Hon"ble the Supreme Court in the case of Godrej Pacific Tech. Limited v. Computer Joint India

Limited, 2008 (3) R.C.R. (Cri), 897 : 2008(4) R.A.J. 627 while considering the provisions of Section 311 Cr.P.C. has held as follows :-

8 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 of the prosecution and not that of

the accused. The Section is a general Section which applies to all proceedings, eqnuiries and trials under the Code and empowers the 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 any 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, he discretion conferred is to be exercised judiciously, as the wide the power the greater is the

necessity for application of judicial mind.

9. As indicated above, the Section is wholly discretionary. The second part of it imposes upon the Magistrate an obligation; it is, that the Court

shall summon and examine all persons whose evidence appears to be essential to the just decision of the case. It is a cardinal rule in the law of

evidence that the best available evidence should be brought before the Court. Sections 60, 64, and 91 of the Evidence Act, 1872 (in short ""the

Evidence Act"") are based on this rule. The court is not empowered under the provisions of the Code to compel either the prosecution or the

defence to examine any particular witness or witnesses on their side. This must be left to the parties. But in weighing the evidence, the Court can

ake note of the fact that the best available evidence has not been given, and can draw an adverse inference. The court will often have to depend on

intercepted allegations made by the parties, or on inconclusive inference from facts elicited in the evidence. In such cases, the Court has to act

under the second part of the Section. Sometimes the examination of witnesses as directed by the Court may result in what is thought to be ""filling of

loopholes"". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course

depend on the facts of each case, and has to be determined by the Presiding Judge.

10. The objection 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 cross-examine. The right to cross-examine. The right to cross-examine 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 cross- examine 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. The State of Maharashtra, .

15. Hon''ble the Supreme Court in the case of Rajendra Prasad v. The Narcotic Cell through its Officer-Incharge, Delhi, 1999 (3) R.C.R. (Cri)

440, had an occasion to deal with the case, where after the prosecution evidence was closed and statement of the accused u/s 313 Cr.P.C. also

stood recorded, and the defence closed the evidence and case was posted for arguments. At that stage, an application u/s 311 Cr.P.C. was

preferred by the prosecution for examining two witnesses, who had already been examined and were to be resummoned for the purpose of

proving certain documents for prosecution. The application was filed, where due to inadvertent mistake on the part of the prosecution, the

evidence stood closed and the documents were not proved on record. It was basically an error due to oversight in the management of the

prosecution. Hon''ble the Supreme Court on consideration of the matter drew a distinction between lacuna in the prosecution and error on the part

of the prosecution and has held as follow :-

7. It is a common experience in criminal courts that defence counsel would raise objections whenever courts exercise powers u/s 311 of the Code

or under 165 of the Evidence Act by saying that the court could not `fill the lacuna in the prosecution case''. A lacuna in prosecution is not to be

equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant

answers from witnesses. The adage `to error is human'' is the recognition of the possibility of making mistakes to which humans are prone. A

corollary of any such laches or mistake during the conduct of a case cannot be understood as the lacuna which a court cannot fill up.

8. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage

of it should normally go to the accused in the trial of the case, but an oversight in the management of the prosecution cannot be treated as

irreparable lacuna. No party in a trial can be foreclosed from correcting errors. If proper evidence was not adduced or a relevant material was not

brought on record due to any inadvertence, the court should be magnanimous in permitting such mistakes to be rectified. After all, function of the

criminal court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties

performed better.

9. The very same decision Mohan Shamji Soni v. Union of India (supra) which cautioned against filling up lacuna has also laid down the ratio thus :

It is therefore clear that the Criminal Court has ample power to summon any person as a witness or recall and reexamine any such person even if

the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by exigency of the situation, and fair play and

good sense appear to be the only safe guides and that only requirements of justice command this examination of any person which would depend

on the facts and circumstances of each case"".

16. On the basis of above observations made by Hon''ble the Supreme Court, it can be stated that in a given case, if proper evidence is not

adduced or relevant material has not been brought on record, due to inadvertence or oversight, the Court should permit such mistakes to be

rectified, which would include an oversight in the management of the prosecution. This mistake or inadvertent omission on the part of the

prosecution cannot be treated as punishable lacuna, which cannot be cured by the Court, while exercising its power u/s 311 Cr.P.C. and no party

in the trial can be fore-closed from correcting errors aforementioned, which have crept in unintentionally and by oversight. 17. Hon''ble the

Supreme Court in the case of Ram Chander Vs. State of Haryana, , has while considering the purpose of establishing the criminal justice system

commented upon the powers of the Presiding Officer of the Criminal Courts. Para-2 of the said judgment reads as follow :-

2. The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or

an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from

combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the

presiding judge must cease to be a spectator and a mere recording machine. He must become a participant in the trial by evincing intelligent active

interest by putting questions to witnesses in order to ascertain the truth. As one of us had occasion to say in the past :

Every Criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in

order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with

the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form, at any

time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172 (2) of the Code of Criminal Procedure enables the Court

to send for the police-diaries in a case and use them to aid it in the trial. The record of the proceedings of the committing Magistrate may also be

perused by the Sessions Judge to further aid him in the trial"". (Sessions Judge, Nellore v. Intna Ramana Reddy, ILR (1972) AP. 683).

18. While applying the abovementioned principles, as have been laid down by the Courts, to the present case, non attachment of the copies of the

statements of Gurdev Singh son of Hari Singh and Teja @ Tejwinder Singh son of Rattan Singh recorded u/s 161 Cr.P.C. by the Investigating

Officer, who have been duly named as injured and eye witnesses and mentioned in the list of witnesses attached with the report u/s 173 Cr.P.C.,

the factum of they were injured, has been duly supported by medico legal reports attached with the challan and this fact having not been disputed

by respondent No. 1-State and accused/respondents, lead to only one conclusion that an error has crept in, which was inadvertent, which cannot

be termed as irreparable lacuna. In case, the said error is not allowed to be rectified, the justice would be a casualty and the purpose, for which the

Criminal Court is established, i.e., to find out the truth, would fail in its duty and quest to find out and to reach the truth. The function of the Criminal

Court is transmission of criminal justice and no party can be allowed to take undue benefit or to count on errors committed by others, leading to

justice being deprived to a party, which deserves a chance to rectify a mistake, which is not of an irreparable nature.

19. The judgments relied upon by accused/respondents shall have no bearing in the light of the observations made by this Court and Hon''ble the

Supreme Court, which have been referred to above.

20. In view of the above, impugned order dated 28.05.2009 (Annexure-P-6), passed by the learned Sessions Judge, Rupnagar, is hereby set

aside and the application u/s 311 Cr.P.C., preferred by the petitioner/complainant is allowed. It would not be out of way to observe here that it

would be open to the learned Trial Court, if it so comes to a conclusion that provisions u/s 216 Cr.P.C. need to be invoked to alter or add any

charge framed against the accused/respondents, which could be consequence of the application u/s 311 Cr.P.C. having been allowed by this

Court, by the present order.