
(2006) 09 P&H CK 0329

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal M. No. 52393-M of 2002

Jai Singh

APPELLANT

Vs

Soma @ Som Nath and others

RESPONDENT

Date of Decision: Sept. 13, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 311, 482

Citation: (2006) 4 RCR(Criminal) 547

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Advocate: Aditya Kumar Sharma, for the Appellant; Virender Verma, Advocate For the Respondent No. 8 Mr. Deepak Girotra, A.A.G., Haryana, for the Respondent

Final Decision: Allowed

Judgement

Rajive Bhalla, J.

Prayer in the present petition, filed u/s 482 of the Cr.P.C., is for quashing the orders dated 16.8.2002 and 23.11.2002 (Annexures P-1 and P-3), passed by the Judicial Magistrate Ist Class, Ambala Cantt. Vide order dated 16.8.2002, the evidence of the prosecution was closed by order, whereas vide order dated 23.11.2002, an application, filed by the complainant, u/s 311 of the Cr.P.C., was dismissed.

2. Vide order dated 16.8.2002, the learned trial Court closed evidence, as despite numerous opportunities, the prosecution could not conclude its evidence. The prosecution, thus, failed to examine the Investigating Officer, the doctor and an eye witness to the occurrence. The petitioner/complainant filed an application, u/s 311 of the Cr.P.C., praying for liberty to examine the aforementioned witnesses. This application was dismissed, holding that the trial Court had no jurisdiction to review its order closing evidence.

3. Counsel for the petitioner/complainant contends that the learned trial Court committed a serious error of law and jurisdiction. It treated the application, filed u/s

311 of the Cr.P.C., as an application for review. Section 311 of the Cr.P.C. does not prohibit a Court from allowing additional evidence, even after it has ordered closure of evidence, provided it appears to the Court that the evidence, sought to be adduced, is necessary for a just decision of the case. The learned trial Court, however, did not appreciate the merits of the application and declined interference on an erroneous presumption that the application filed would entail a review of the order dated 16.8.2002. It is, therefore, prayed that as the evidence, sought to be adduced, is necessary for a just decision of the case, the present petition be allowed and the impugned orders quashed.

4. Counsel for respondent Nos. 1 to 7 vehemently contends that the impugned orders do not suffer from any error of law and fact. As evidence was closed by order, the trial Court rightly held that it had no jurisdiction to review its order, dated 16.8.2002 and, therefore, the present petition be dismissed.

5. Counsel for the State of Haryana does not oppose the prayer, made in the present petition.

6. I have heard learned counsel for the petitioner and perused the paper book.

7. On 16.8.2002, the trial Court ordered closure of prosecution evidence, for its failure to conclude evidence, despite numerous opportunities. The petitioner, who is the complainant, filed an application, u/s 311 of the Cr.P.C., praying for permission to lead additional evidence. The trial Court dismissed the application holding that it had no jurisdiction to review its order dated 16.8.2002 directing closure of the prosecution evidence.

8. The trial Court, in my considered opinion, erred in jurisdiction and in law, while dismissing the application. It erroneously construed that acceptance of an application, filed u/s 311 of the Cr.P.C., would require it to review its order, dated 16.8.2002. This inference, in my considered opinion, is unwarranted and unsustainable in law. Powers, conferred upon a Court, u/s 311 of the Cr.P.C., are in no manner circumscribed by an order directing closure of evidence. The expressions "at any stage of any inquiry, trial or other proceedings under the Cr.P.C." appearing in Section 311 of the Cr.P.C. clearly suggest that this power can be invoked by a Court at any stage of any inquiry, trial or other proceedings under the Cr.P.C., subject, however, to an over-riding principle that the evidence, sought to be adduced, should appear to the Court to be essential for a just decision of the case, the paramount consideration being "just decision of a case". To, therefore, construe an order directing closure of evidence as a bar to the exercise of powers, u/s 311 of the Cr.P.C. to be an application for review of the order closing evidence, in my considered opinion, would be unwarranted. Such an interpretation to the provisions of Section 311 of the Cr.P.C., does not flow from the language used therein. The learned trial Court, therefore, committed an error of jurisdiction and law, while dismissing the application, filed by the petitioner. Consequently, the present petition

is allowed and the order dated 23.11.2002 is set aside. The learned trial Court shall consider and decide the application, filed by the petitioner/complainant, u/s 311 of the Cr.P.C., afresh, in accordance with law. The parties, through their counsel, are directed to appear before the trial Court on 9.10.2006.