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Baljit and other Vs State of Haryana and another

Criminal Miscellaneous No. M-13005 of 2008 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 2, 2009

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

Citation: (2009) 28 CriminalCC 386 : (2009) 2 RCR(Criminal) 178

Hon'ble Judges: Harbans Lal, J

Bench: Single Bench

Advocate: Mrs. Baljit Mann, for the Appellant; Tarunveer Vashisth, Additional Advocate, General, for the Respondent

Final Decision: Allowed

Judgement

Harbans Lal, J.
This petition has been moved by Baljit Singh and others against the State of Haryana as well as Rajbir u/s 482 of Cr. P.C

for quashing and setting aside the order dated 6.5.2008 passed by the Court of learned Additional Sessions Judge, Sonepat (Annexure P.4)

dismissing their application u/s 311 of Cr. P.C for recalling the witnesses for further cross-examination.

2. The facts giving rise to this petition are that the petitioners along with two others, namely, Inder son of Meer Singh and Atma Ram son of

Hukam Singh who have since died, were falsely arrayed as accused in a case FIR No. 63 dated 21.4.2002 under Sections 302, 307, 452, 449,

148 read with Section 149 of IPC and 25 of the Arms Act at Police Station Kharkhoda, District Sonepat. The petitioners Ashok Kumar and Amit

alias Kala are confined in District Jail, Sonepat, while rest of the petitioners are on bail. They are facing the trial in the said case. Over the years,

there is a long history of enmity between the families of the petitioners and the complainant Rajbir and others. Since the year 2002, at least seven

persons from both the sides, have been murdered on account of animosity and large number of persons are languishing in jail. FIR No. 63 dated

21.4.2002 under Sections 302, 307, 452, 449, 148 read with Section 149 of IPC and 25 of Arms Act, Police Station KharKhoda has been

registered on the basis of the statement of aforesaid Rajbir against 13 accused for one murder. FIR No. 98 dated 5.6.2005 under Sections 302,

34, 148 read with Section 149 of IPC and 25 of Arms Act, Police Station Sonepat has been registered on the basis of the statement of

Chandervir son of Dalel Singh against 12 accused for one murder. FIR No. 146 dated 15.10.2005 under Sections 302, 34 of IPC and 25 of

Arms Act, Police Station Murthal has been registered on the basis of the statement of Smt. Mohindro Devi wife of Prem Singh against 10 accused

for one murder. FIR No. 46 dated 8.3.2007 under Sections 302, 307, 120-B, 148 read with Section 149 of IPC and 25 of Arms Act, Police

Station Kharkhoda has been registered on the basis of the statement of Bal Kishan son of Har Kishan against 10 accused for double murder. FIR

No. 55 dated 10.3.2008 under Sections 302, 365, 201 of IPC and 25 of Arms Act, Police Station Kharkhoda has been registered on the basis of

the statement of Raj Singh son of Mange Ram against 2 accused for double murder. The cases are pending between the parties in various Courts.

On account of the deep rooted animosity and dangerous rivalry amongst both the rival factions, who constitute major chunk of the village

population, the atmosphere in the village remained tense and highly surcharged. Both the parties have apprehension everyday that one or the other

member of their family may be killed by the rival party. Both the parties have applied for providing security on account of apprehension of danger

from the other party. The parties were provided security. However, in spite of all that, the commission of murders continued, thus surcharging the

atmosphere even further. In view of this situation prevalent in the village, the Panchayats of Village Jharot along with the Panchayats of 40 adjoining

villages got together and brought about a compromise in the presence of hundreds of villagers between the warring factions of both the parties.

Affidavits were given by both the sides to the Panchayat to the effect that they will maintain peace and harmony in the village and will not commit

any crime in future against each other. They also undertook to withdraw the criminal cases pending against each other in various Courts to show

their goodwill and bonafide. Annexure P.1 is the copy of the panchayatnama dated 10.2.2008. In view of this situation, an application dated

15.3.2008 u/s 311 of Cr. P.C was moved in FIR No. 63 ibid before the Court of learned Additional Sessions Judge, Sonepat for placing on

record the affidavits of Rajbir complainant PW1 and other PWs expressing that they have registered the case against the petitioners on account of

some misunderstanding and in fact, they were not the persons, who had committed the occurrence. It was also prayed that the witnesses who have

appeared as PW1, 6, 7, 8 and 10 may be recalled for further cross-examination. In reply filed to this application by the State, the DSP has

recommended for acceptance of the application on the ground that peace and harmony will prevail in the area and it may bring an end to the long-

standing enmity between the parties. The DSP has also observed that in view of the fact that the compromise was effected with great difficulty on

the intervention of the Panchayats of about 40 adjoining villages, which held meetings on four occasions, it will be in the interest of the public peace

and tranquillity, if the said application was accepted by the Court. He has also admitted that in spite of security being provided to both the rival

factions, the murders on both the sides did not cease and everyday after sunset there is surcharged atmosphere in the village and imminent danger

of some untoward incident happening in the area. In view of this reply, the learned Public Prosecutor made a statement before the learned trial

Court that in terms of the settlement arrived at between the parties, with the intervention of the Panchayat, relations between the parties have

become cordial. Thus, in order to weed out any further disharmony, application moved u/s 311 of Cr. P.C by the petitioners may be allowed. The

perusal of the impugned order dated 6.5.2008 Annexure P.4 would show that the learned trial Court has failed to appreciate the spirit in which the

application was filed by the petitioners and the fact that its acceptance was strongly recommended by the State agency and dismissed the

application merely on the technical grounds that since the witnesses can only be cross- examined with regard to their earlier testimony in the Court

for which they have already been cross-examined, therefore, the affidavits of the complainant party cannot be taken into account since they cannot

be cross-examined with regards thereto. The learned trial Court committed grave error in relying upon various judgments, facts of which are

distinguishable as those relate to the cases in which the witnesses were pressurised to withdraw from their testimony to save the accused which is

not the situation in the present case. If the affidavits of the prosecution witnesses are not taken on record and they are not allowed to testify in the

Court, it may again trigger off more violence in the area resulting in further loss to life and liberty. This imminent apprehension can be avoided, if the

parties are allowed to testify in the Court to show their bonafide and acceptance of the decision of the Panchayat by both the warring factions. The

petitioners have no other alternative or efficacious remedy to approach this Court except by invoking its inherent powers u/s 482 of Cr. P.C to

secure the ends of justice, in the peculiar circumstances of the case. In these circumstances, the order dated 6.5.2008 Annexure P.4 be quashed

and set aside and the application u/s 311 of Cr. P.C filed by the petitioners be allowed and the affidavits of the prosecution witnesses be taken on

record and the witnesses be recalled for further crossexamination.

3. In the written reply filed by the State, it has been averred that a dispute is continuing between two rival factions in Village Jharot Police Station

Kharkhoda, District Sonepat since 2002 till date in which at least five persons have lost their lives. Many persons have lost their limbs on account

of receiving fire arm injuries. The cases as mentioned in the petition have been registered. Earlier silence prevails in the Village Jharot immediately

after sunset and curfew type situation prevails. The whole village is living in an atmosphere of fear. The agricultural activities and daily life is severely

effected. Both factions had requested for police protection which was granted to them. In-spite of the police protection, murders have been

committed by both the factions. From this, it is apparent that even the police protection has failed to check this blood shed. The social activists of

the area of Kharkhoda and the Panchayats, keeping in view the atmosphere, carried out the discourse with the rival factions and other people of

the area, as a result of which, both rival factions have agreed to bury the past hatchet and to maintain peace. They have given assurance to the

respectables of the Panchayats. The meetings of the Panchayat were convened four times in the Grain Market of Village Kharkhoda, in which

thousands of respectables from the surrounding villages participated. In the Panchayat meetings, both the rival factions gave assurance to put an

end to their past grievances. During this period, both the rival factions participated in each other social functions and agreed to maintain peace and

harmony and expressed regret over the past grievances. Now both the factions go to the Courts in the common vehicles. Keeping in view the

public good and tranquility, the Panchayat has effected a full compromise between both the factions. Ultimately, both the factions have no grudge.

Therefore, the compromise is the only way out to end this blood shed. In order to do so, Panchayat of 40 villages was convened on four occasions

in village Kharkhoda and a compromise was effected between the rival factions, so that, the grievances of both the parties may come to an end

permanently. In view of these facts and circumstances, the answering respondent had filed reply to the application moved u/s 311 of Cr. P.C

before the learned trial Court and had prayed the learned trial Court to accept the same.

4. I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

5. Perhaps, this is for the first time in the judicial annals that the State without any reservation has prayed by filing reply before the learned trial

Court as well as this Court that the application moved by the accused party u/s 311 of Cr.P.C be accepted. To shun further blood shed, carnage is

the obvious reason for the State to make such prayer to the Courts. The intendment of law is to restore peace in the Society and to bring about

harmony between the warring factions. The Courts have been constituted to administer justice to the public. If the rigours and rigidity of law are

allowed to hold sway in the present case, admittedly, there is every possibility of there being further blood shed. Jamatraj Kewalji Govani Vs. The

State of Maharashtra, ., while discussing the scope of Section 540 of the vintage Criminal Procedure Code as well as Section 165 of the Evidence

Act, the Apex Court ruled that

Chapter 21 of Cr. P.C does not restrict the powers of Criminal Court u/s 540. Section 540 of Criminal Procedure Code and Section 165 of

Evidence Act, between them confer a wide discretion on the Court to act as the exigencies of justice require. As the Section stands there is no

limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is bonafide of the opinion that

for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to

something in the interest of the accused only. The action may equally benefit the prosecution. There is, however, the other aspect, namely, of the

power of the Court, which is to be exercised to reach a just decision. This power is exercisable at any time.

6. It is notable that Section 311 of the Code of Criminal Procedure, 1973 is the reincarnation of Section 540 of the old Code.

7. In the mandatory part of Section 311 ibid, the paramount consideration being the doing of justice to the case, the Court can and ought to

examine witness at any stage (even when it proceeds to write judgment), whenever it considers the evidence essential. If it results in what is called,

feeling of loopholes"", i.e., purely subsidiary factor. Law confers a power in absolute terms to be exercised at any stage of the trial to examine a

witness and makes this duty and obligation of the Court provided the just decision of the case demands it. The present one is such a case, wherein

the learned trial Court seems to have adopted such a course which is fraught with the danger of defeating justice. The power u/s 311 of Cr. P.C is

given to prevent miscarriage of justice. If the Court finds that the new evidence is essential to the just and proper decision of the case, it is

obligatory to admit it at any stage of the proceeding, however, late. If valid reasons are made out, the Courts may allow any of the parties to call

new evidence at any stage; or it may suo motu call any witness if it is considered essential in the interest of justice. The affidavits herein this case

sought to be tendered may be deemed to be new evidence. When accused moves an application u/s 311 of Cr. P.C for recalling the witnesses, the

same should be allowed, if accused wants to bring to the notice of the Court, the matter which can be said to be relevant for the purpose of

deciding the case. Of course, rejection of application for recalling witnesses being interlocutory is not revisable, but in proper case order could be

set aside under Article 227 of the Constitution of India. The present one being a proper case, the impugned order can be set aside in view of the

said provision of law.

8. If the prayer is declined, the possibility of spiralling and stirring up hostility between both the parties cannot be ruled out. Admittedly, after the

compromise between the parties, they have started going to the Courts in common vehicles and harmony between the two has been restored. If

this petition is declined and the accused party is convicted and sentenced, again, the parties will be retrograded to the same position as they stood

prior to the compromise brought about by 40 Gram Panchayats of various villages. The peculiar and piquant situation obtaining in the village has

become a source of constant nuisance to the police as well as other authorities of the district administration. The real intention of law is to put an

end to the longstanding enmity between the parties. The procedural prescriptions are the hand-maids of justice. Their motive is to advance the

cause of justice and not to thwart the same. Concededly, after compromise between the parties, there has been no untoward incident between the

parties. One feels that they have come to a peace and there has been forgetting and forgiving. In the words of Lord Hewart ""It is not merely of

some importance, but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be

done."" It is such a novel case in which the propriety demands that the prayer of the petitioner should be accepted. In re : Zahira Habibullah Sheikh

and another v. State of Gujarat & others, 2006 (2) RCR (Cri) 448 : 2006 (1) AC 649., the Apex Court has observed that Section 311 of the

Code of Criminal Procedure is wholly discretionary.

9. It is common case of the parties that there are two rival factions in Village Jharot and since 2002 till date at least 7 persons have lost their lives

and many persons have lost their limbs on account of receiving fire arm injuries and number of cases have been registered. The situation in the

village after sunset is of curfew type. If such a situation is allowed to continue by disallowing this petition, the day is not far off, when the residents

of this village under the surcharged atmosphere will get so much suffocated that either they will have to shift from this village or they may take any

other drastic step. If the blood shed continued, most of them will lose their lives in murderous assaults. The agricultural activities and daily life has

been severely affected. Admittedly, the murders have been committed despite the fact that police protection has been provided to both the

factions. It clearly smacks of failure of the police to check this blood shed. To restore and maintain normalcy between the two warring factions, the

legal impediments, if any, should not be allowed to come in the way. The legal bottle necks, if any, should not be given precedence over the

preventive measures of further blood shed. If the situation is not repaired, the day will come, when most of the women-folk of this village would be

rendered widows, the children would become motherless or fatherless or orphaned and the salutary step taken by host of the Panchayats by

putting in earnest efforts would go in waste. Law is enacted for welfare of the society. Paramount consideration is to watch the societal interest.

Here is not the case of pressuring the witnesses examined to withdraw from their own testimony. The object is to obviate any further bloodshed by

giving effect to the compromise, which will become insignificant and a mere paper transaction, if this petition is not accepted.

10. To safeguard interest of both the parties apart from the other residents of the village, justice demands that this petition should be allowed. I

order accordingly and set aside the order dated 6.5.2008 Annexure P.4 passed by the learned trial Court. The application moved u/s 311 of Cr.

P.C by the petitioners is allowed with a direction to the learned trial Court to take the affidavits of the prosecution witnesses on record and to

recall the desired witnesses for further cross-examination.

11. Disposed of accordingly.