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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision: 09.01.2025

Inderjit Thakur and others

...Petitioners

V/s

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Aayush Gupta, Advocate for the petitioners.

Mr. Yuvraj Singh, AAG Punjab.

Mr. Ivan Singh Khosa, Advocate and

Mr. Akshay Mittal, Advocate for respondent No.2.

SUMEET GOEL, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the order dated 11.02.2019 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Ludhiana whereby the application dated 17.10.2018 filed by the respondent No.2 (herein) -complainant, under Section 311 of Cr.P.C. of 1973 was allowed and respondent No.2-complainant was permitted to place on record the purchase bill as well as the photographs of the articles allegedly stolen by the accused (petitioners herein) after breaking the locks.

2. Learned counsel for the petitioners has iterated that the bills and the photographs in question were not submitted during the investigation and are alleged to be forged and fabricated as no theft was committed by the petitioners. Learned counsel has further iterated that the bills and photographs were presented before the investigating agency, however, the same has not been considered by the investigating agency, being irrelevant,

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and accordingly, the challan was filed. According to learned counsel, while allowing the application, the learned Court below has permitted the prosecution to examine the witnesses regarding the bills. However, it is emphasized that as these witnesses were not included in the challan, their evidence should not be considered by the Court. Allowing such an exercise would result in a miscarriage of justice, as it would enable either party to gather additional evidence, after the filing of the challan, thereby filling the lacunae. It has been further iterated that the evidence sought to be brought on record by virtue of Section 311 Cr.P.C., at the most pertains to Section 380/201 of IPC of which charge has not been framed by the trial Court and, therefore, the same is irrelevant. Further, no ground is made out by the applicant (before the trial Court) to bring forward the evidence by virtue of Section 311 of Cr.P.C. at this belated stage. Furthermore, it is pertinent to note that the impugned order is non-speaking as the concluding paragraph of the order clearly indicates that the Court below has allowed the application without properly considering the facts and circumstances of the case. Moreover, no reasoning has been assigned to justify the decision. Therefore, on this ground alone, the impugned order deserves to be set-aside.

3. Learned State counsel as well as the learned counsel appearing for the complainant-respondent No.2 has opposed the instant petition by arguing that the purchase bills and photographs relate to the stolen property, which forms the subject matter of the present FIR and the ensuing trial. According to learned counsel, these documents are being introduced by the complainant-respondent No.2 during the prosecution's evidence, specifically during his own testimony. Therefore, no prejudice is caused to the petitioners-accused, who can challenge the authenticity of this evidence



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through cross-examination or by presenting their own defence evidence. Furthermore, Section 91 of the Cr.P.C., 1973 empowers the Court to issue summons for the production of any document or other material which it deemed necessary or desirable for the purpose of investigation or trial. Therefore, dismissal of the instant petition is prayed for.

4. I have heard learned counsel for the rival parties and perused the paper-book.

5. It would be apposite to refer herein to a judgment passed by this Court in case titled as ***Karamjit Singh vs. State of Punjab and another: 2024 NCPHHC 24178***; relevant whereof reads as under:-

“8.4 As an epilogue to the above rumination, the following principles emerge:

(I) The broad gamut for exercising power by a criminal trial Court under Section 311 of Cr.P.C. are as follows:

(i) The prime factor for considering a plea under Section 311 of Cr.,P.C. is as to whether such evidence “appears to be essential to the just decision of the case.”

(ii) Section 311 of Cr.P.C. can be invoked by a criminal trial Court even when cross-examination of a witness has earlier been foreclosed by a Court order. Such exercise of power by the Court cannot be construed as the concerned Court recalling/reviewing its own order.

(iii) Section 311 of Cr.P.C. empowers a criminal trial Court to even allow further examination/cross-examination of a witness at instance of the prosecution/accused.

(iv) A criminal Court is well within, its judicial discretion, to summon any person as a witness at any stage of proceedings/trial etc. till such Court is seized of the matter.

(v) A criminal trial Court may exercise power under Section 311 of Cr.P.C. on an application made by a party to lis or on its own volition.

(vi) Successive application(s) for summoning same witness for examination/re-examination is not debarred but such a plea deserves to be dealt with exercising a higher degree of circumspection.

(II) No straight jacket formulae can be enumerated regarding mode, manner and extent of exercise of power under Section 311 of Cr.P.C by a criminal trial Court as every case has its own unique facts/circumstances.

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It is neither possible nor pragmatic to lay down any such exhaustive guidelines as every case is sui generis in terms of factual conspectus.

(III) Needless to say that exercise of power under Section 311 of Cr.P.C. by a criminal trial Court should be undertaken by according cogent and lucid reasons, in accordance with basic principles of our criminal jurisprudence, for such exercise of its power.”

6. The impugned order arises from a trial being undertaken against the petitioners (herein) in FIR bearing No.114 dated 27.07.2014 came to be registered at Police Station Division No.4, District Ludhiana City under Sections 447, 448, 511, 380 and 34 of IPC, relevant whereof reads as under:-

“To the Hon'ble Senior Officer, Police Station Division No.5, Ludhiana. Sir, it is submitted that I Pranav Thakur son of Narender Pal Thakur, resident of House No.28B-1120, Kanchan Colony, Vishal Nagar, Pakhowal Road, Ludhiana, there is a house in the name of my grandfather at Kailash Nagar Road, having House No.185B, where my uncle Inderjit Thakur along with his family resides on first floor, and I reside on second floor, and in the balance building both the parties have equal right, where me and my family some time goes, on this building on the second floor my locks are there, on 07.01.2014 I was going to my portion on second floor, my aunty Amita Thakur, uncle Inderjit Thakur and their son Abhishek Thakur stopped me from going inside, thereafter, after getting myself saved from them, when I went to second floor, I saw that the locks of my portion on second floor were broken and one of the door was also broken and was not there, the articles which were there in my portion i.e. silver articles including dinner set, geyser, other important documents and house hold items were not there, I am sure that all these articles have been stolen by my uncle, aunty (Inderjit Thakur, Amita Thakur and Abhishek Thakur), because all of them wanted to take possession of my house, therefore legal action be taken against them and justice may be done with me and the stolen articles may be recovered. Thanking you. Sd/- Pranav Thakur”

7. Investigation was thereafter carried out and challan (report under Section 173 of Cr.P.C., 1973) was presented before the Court of competent jurisdiction against the accused-petitioners on 29.11.2014. During the course of trial proceedings, an application dated 17.10.2018,

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under Section 311 of the Code was filed on behalf of the complainant-respondent No.2 seeking permission to place on record the bills as well as the photographs of the articles which were allegedly stolen by the petitioners. The application was, however, opposed by the accused-petitioners by filing reply asserting that the bills and photographs in question were never submitted during the investigation and the same are forged and fabricated as no theft was committed by them. Furthermore, the complainant has never submitted the alleged bills or photographs to the Police during the course of investigation or at the time of preparing the challan. It was further submitted that the complainant seeks to introduce the aforesaid documents through the present application solely to harass the accused, which is impermissible under law. Denying all the claims made in the application, the accused-petitioners (herein) have requested the dismissal of the present application. However, the trial Court, vide impugned order dated 11.02.2019, allowed the application subject to the condition that the applicant (before the trial Court) shall prove the genuineness of the said bills by examining the witness of the bills.

8. The factual conspectus of the matter in hand reveals that the complainant-respondent No.2 has filed the application in question before the trial Court to place on record the purchase bills and photographs of the articles allegedly stolen by the accused-petitioners allegedly after breaking the locks of the house. These documents are deemed necessary for the effective and proper adjudication of the matter in hand. It is well established principle of law that, in the interest of justice, valuable evidence that may have been omitted due to an oversight or mistake by either party can be brought on record at any stage of the proceedings, provided it is essential for

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the just decision of the case. Through the present application, the complainant-respondent No.2 seeks to introduce the bills of the silver articles purportedly stolen by the accused-petitioners. This evidence holds significant importance in the present case, as it is crucial for the complete and fair adjudication of the matter and bears significantly on the issues in dispute. Furthermore, no prejudice would be caused to the accused-petitioners, as they get the opportunity to scrutinize the authenticity and veracity of the evidence through cross-examination or by presenting their own defence.

9. For the foregoing reasons, this Court does not find any error in the impugned order passed by the Court below. In the considered opinion of this Court, the trial Court has appropriately dealt with the application in question by allowing the same. Hence the present petition deserves to be dismissed.

10. Ordered accordingly.

11. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

January 09, 2025

Ajay

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No