
Before Rajive Bhalla, J.

JAI SINGH,—*Petitioner*

versus

SOMA @ SOM NATH & OTHERS,—*Respondents*

CRIMINAL MISC. NO. 52393/M OF 2002

13th September, 2006

Code of Criminal Procedure, 1973—S.311—Prosecution failed to lead evidence despite numerous opportunities—Trial Court closing prosecution evidence—Complainant filing application u/s 311 seeking permission to lead additional evidence—Trial Court dismissing application holding that it had no jurisdiction to review its earlier order closing evidence—Powers of a Court u/s 311 are in no manner circumscribed by an order directing closure of evidence and can be invoked at any stage of any inquiry, trial or other proceedings—Trial Court erroneously construing order closing evidence as a bar to the exercise of powers u/s 311 and application u/s 311 as an application for review of its earlier order—Petition allowed, order of trial Court dismissing application u/s 311 set aside holding the same unwarranted and unsustainable in law.

Held, that the trial Court erred in jurisdiction and in law while dismissing the application. It erroneously construed that acceptance of an application filed under section 311 of the Cr.P.C. would require it to review its order dated 16th August, 2002. This inference is unwarranted and unsustainable in law. Powers conferred upon a Court under section 311 of the Cr.P.C. are in no manner circumscribed by an order directed 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 the 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 under section 311 of the Cr.P.C. or to construe an application filed under section 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 therein. The learned trial Court, therefore, committed an error of jurisdiction and law while dismissing the application filed by the petitioner.

(Para 8)

Aditya Kumar Sharma, Advocate, *for the petitioner.*

Virender Verma, Advocate *for respondents No. 1 to 7.*

Deepak Girotra, AAG, Haryana, *for respondent No. 8.*

JUDGEMENT

RAJIVE BHALLA, J.

(1) Prayer in the present petition, filed under Section 482 of the Cr.P.C. is for quashing the orders dated 16th August, 2002 and 23rd November, 2002 (Annexures P-1 & P-3), passed by the Judicial Magistrate 1st Class, Ambala Cantt. *Vide* order dated 16th August, 2002, the evidence of the prosecution was closed by order, whereas *vide* order dated 23rd November, 2002, an application, filed by the complainant, under Section 311 of the Cr.P.C., was dismissed.

(2) *Vide* order dated 16th August, 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, under Section 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 under Section 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 16th August, 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 respondents No. 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 16th August, 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 16th August, 2002, the trial Court ordered closure of prosecution evidence, for its failure to conclude evidence, despite numerous opportunities. The petitioner, who is complainant, filed an application, under Section 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 16th August, 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 under Section 311 of the Cr.P.C, would require it to review its order, dated 16th August, 2002. This inference, in my considered opinion, is unwarranted and unsustainable in law. Powers, conferred upon a Court, under Section 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, under Section 311 of the Cr.P.C or to construe an application, filed under Section 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 23rd November, 2002 is set aside. The learned trial Court shall consider and decide the application, filed by the petitioner/complainant, under Section 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 9th October, 2006.

R.N.R.

Before R. S. Madan, J.

DEEPAK NARANG,—*Petitioner*

versus

STATE OF HARYANA & ANOTHER,—*Respondents*

CRIMINAL MISC. NO. 8850/M OF 2004

14th September, 2006

Code of Criminal Procedure, 1973—S.197—Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002—S.32—Default in payment to Bank pertaining to loan facilities—Bank initiated proceedings against respondent's father—Civil decree in favour of Bank—No payment even after passing of the decree—Bank initiating proceedings under the provisions of 2002 Act—Petitioners, officials of the Bank being public servant following the procedure laid down in 2002 Act—Petitioners under an obligation to affix notice on the outer gate of house of defaulter—Police present at the time of affixing notice also reporting that no untoward incident took place—Complainant not available in the house at the relevant time—No cause of action to sue petitioners—Action of petitioners to get the service of notice effected through affixation is in discharge of their official duties—Petitioner could not be prosecuted without obtaining sanction from the competent authority as required under section 197 Cr.P.C.—Complaint is an act of an abuse of the process of Court—Petition allowed, complaint as well as summoning order quashed.

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Held, that the trial Court erred in jurisdiction and in law while dismissing the application. It erroneously construed that acceptance of an application filed under section 311 of the Cr.P.C. would require it to review its order dated 16th August, 2002. This inference is unwarranted and unsustainable in law. Powers conferred upon a Court under section 311 of the Cr.P.C. are in no manner circumscribed by an order directed 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 the 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 under section 311 of the Cr.P.C. or to construe an application filed under section 311 of the Cr.P.C. to be an application for review of the order closing

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