

*Before Sureshwar Thakur, J.*

**SURESH KUMAR**—*Petitioner*

*versus*

**STATE OF PUNJAB AND ANOTHER**—*Respondents*

**CRM-M No.54460 of 2021**

January 19, 2022

*Code of Criminal Procedure, 1973—Ss.311 and 319—Petitioner filed applications under Sections 311, 310 and Section 319 Cr.P.C. before the Additional Sessions Judge— Applications and main appeal ordered to be heard together—Order quashed—Application to be taken up in the first instance.*

*Held that*, consequently, for ensuring that prior to the listing of the main appeal for arguments, decisions are recorded by the learned Additional Sessions Judge, Mansa, on the above applications, the impugned order insofar as it orders for conjoint listing, and, hearings being made upon the main appeal, and, upon the miscellaneous applications, is quashed, and, set aside.

(Para 4)

Further held that, the petition is disposed of.

(Para 6)

Ashok Kumar Khunger, Advocate  
*for the petitioners.*

Bhupender Beniwal, AAG, Punjab.

**SURESHWAR THAKUR, J. (ORAL)**

(1) On 2.12.2021, the learned Additional Sessions, Mansa, made the hereinafter extracted order:-

“Appellant Suresh Kumar has submitted one bill dated 30.12.1994 regarding purchasing of refrigerator. Partly arguments on application dated 5.3.2020 advanced by appellant Suresh Kumar. During arguments appellant Suresh Kumar has stated that he was suffering from back pain and unable to advance further arguments. Granted. In the interest of justice, case is adjourned to 10.12.2021 for remaining arguments on application under Section 311 Cr.P.C. and for arguments on application under Section 319

Cr.P.C., 310 Cr.P.C., applications dated 19.5.2017, 20.5.2017, 6.6.2019, 28.2.2020, 5.3.2020, 4.12.2020, 14.12.2020, 6.1.2021 and for arguments on main appeal.”

(2) A reading of the above extracted order, reveals that applications respectively cast, under Sections 311, 310, and, under Section 319 Cr.P.C., were ordered to be listed on 06.1.2021. However, a reading of the afore order also details that, on the afore date, the learned Additional Sessions Judge, Mansa, had made an order for arguments, being made not only upon the afore applications but also upon the main appeal.

(3) Learned counsel for the petitioner impugns the ordering of conjoint hearing(s) being made upon the applications (supra), and, also upon the main appeal, as upon a conjoint decision being recorded, adverse to the petitioner, more especially, on the application cast under Section 311 Cr.P.C., along with a decision on merits, thereupon the aggrieved complainant would lose an opportunity to assail the disaffirmative order, if any, as may become pronounced, upon his application under Section 311 Cr.P.C., as it would merge in the decision made on the main appeal. Besides obviously, there would be no efficacious remedy for the complainant to, after a conjoint decision on merits, being recorded, on the main appeal, and a disaffirmative decision, being made on the application (supra), to cast a valid challenge thereon.

(4) Consequently, for ensuring that prior to the listing of the main appeal for arguments, decisions are recorded by the learned Additional Sessions Judge, Mansa, on the above applications, the impugned order insofar as it orders for conjoint listing, and, hearings being made upon the main appeal, and, upon the miscellaneous applications, is quashed, and, set aside.

(5) Therefore, the learned Additional Sessions Judge, Mansa, is directed to, before making a decision upon the main appeal, to decide in accordance with law, the afore miscellaneous applications, so as to give an opportunity to the aggrieved concerned, to access the appropriate remedy, in accordance with law.

(6) The petition is disposed of.