

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-52970-2022 (O&M)
Date of Decision: 29.03.2023

(I)
Bennett Coleman and Company Limited

....Petitioner(s)

Versus

State of Haryana and others

.....Respondent(s)

CRM-M-45011-2022 (O&M)

(II)
Sehjad

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CRM-M-60080-2022 (O&M)

(III)
Sehzad

....Petitioner(s)

Versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R.S Rai, Senior Advocate assisted by
Mr. Pawan Narang, Advocate,
Mr. Mayank, Advocate and

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-2-

Mr. Farhad Kohli, Advocate, for the petitioner
in CRM-M-52970-2022.

Mr. G.S. Sawhney, Advocate,
for the petitioner in CRM-M-45011-2022
and CRM-M-60080-2022 and
for respondent No.2 in CRM-M- 52970-2022.

Ms. Nidhi Garg, AAG, Haryana.

JASGURPREET SINGH PURI, J.

1. Vide order dated 20.12.2020, CRM-M-45011-2022 was directed to be heard alongwith CRM-M-52970-2022 and therefore all the three petitions are taken up together for final disposal with the consent of learned counsels for the parties since the subject matter is inter-related.

2. CRM-M-52970-2022, titled Bennett Coleman and Company Limited Versus State of Haryana and others has been filed seeking quashing of order dated 20.10.2022 (Annexure P-1) whereby the application filed by the petitioner under Section 311 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C') has been dismissed by the learned trial Court.

3. CRM-M-60080-2022 has been filed by the petitioner Sahzad seeking grant of regular bail. Similarly, CRM-M-45011-2022 is also filed by the same petitioner Sahzad seeking grant of regular bail in a different FIR.

4. CRM-M-52970-2022 wherein the prayer is for grant of quashing of order dated 20.10.2022 (Annexure P-1), the aforesaid petitioner Sahzad alongwith other two co-accused were also impleaded as respondents.

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-3-

All of them were served but only Sahzad is being represented by the learned counsel who is also the counsel in his bail petition.

5. There are two FIRs against the petitioner Sahzad in which the present two bail petitions have been filed. One is CRM-M-60080-2022 which pertains to FIR No.208 dated 22.08.2021, under Sections 153-A, 295-A, 342 and 506 IPC, registered at Police Station City Nuh, District Nuh (Mewat) and second is CRM-M-45011-2022 which pertains to FIR No.126 dated 21.08.2021, under Sections 153-A, 295-A, 298, 323, 406 and 506 IPC, registered at Police Station Rozaka Meo, District Mewat. The allegations in both the FIRs are almost similar in nature. Since the quashing petition has been filed pertaining to FIR No.208 dated 22.08.2021, the facts are being taken from the aforesaid FIR. The quashing petition and the bail petitions shall be considered separately in this order.

CRM-M-52970-2022
(Bennett Coleman and Company Limited
Versus
State of Haryana and others)

6. FIR No.208 dated 21.08.2021 was registered vide Annexure P-2 against one Abu Bakar on the basis of a complaint made by complainant namely Devinder @ Lillu by alleging that a few years back he had a rift with his family and due to which, he was going through a mental trauma. The aforesaid accused namely Abu Bakar who used to get people religiously converted, took advantage of the same and instigated him and his family and also lured him for getting him a good job. Thereafter, in the year 2017, he took him to a place in Delhi in his car and got forcibly converted

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-4-

him into Islam religion. Thereafter, the aforesaid accused threatened to kill him and forcibly sent him to his Jamaat. He used abusive languages and derogatory remarks against Hindu religion, Idol Worship and Hindu deities. During Jamaat as well, he provoked him against Hindu religion and the aforesaid accused Abu Bakar paid him Rs. 7000/8000/- via a people in the Jamaat in lieu of his conversion to Islam. The aforesaid accused also prepared his conversion papers and changed his name to Mohamed Jaid. When he had sent him to Jamaat, then he had held two of his minor children with him and pressed them also to convert to Islam. He alongwith his family were able to get out of their clutches and tortures with great difficulty in February, 2020 and their life was under great threat from these people. Now they are living away from Nuh. Now again on one day, he met aforesaid Abu Bakar and he threatened him that if he did not again convert to Islam, then they will kill him and his entire family. It is further stated in the complaint that during his conversion, he heard about some Kalim Siddiqui and Global Peace Centre from Abu Bakar which is being run by him under which he finds poor, helpless children and people and lures them for money, property and marriage and gets them converted to Islam.

7. The present is a petition which has been filed by one news channel company namely Bennett Coleman & Company Limited wherein they are aggrieved by the impugned order passed by the learned CJM, Nuh vide Annexure P-1 whereby an application filed by the aforesaid Company has been dismissed on the ground of *locus standi*. The said application was filed under Section 311 Cr.P.C for apprising the Court about appropriate and

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-5-

competent person for filing Certificate under Section 65-B of the Indian Evidence Act and for summoning him.

8. Mr. R.S. Rai, learned Senior Counsel appearing on behalf of the petitioner-Company submitted that 'Times Now Nav Bharat Channel' as a part of reporting crimes according to journalistic investigation carried on a sting operation/report which was telecasted on 'Times Now Nav Bharat Channel' on 27.07.2021 by reporting the subject matter which is pending trial in the present case. After the registration of FIR, when the Haryana Police visited the office of the petitioner-Company at Noida and made a requisition for video of the entire telecast, wherein the sting operation was telecasted and in aid of investigation, Mr. Arunesh Kumar, Deputy General Manager who is a designated person in the IT Department at Times Global Broadcasting Company Limited extracted the requisitioned telecast in a pen drive to be handed over as prosecution evidence to the concerned Investigating Officer. However, at that point of time, one Abhishek who is a journalist and was available at the office of the petitioner-Company and was totally a new person in the organization issued a Certificate under Section 65-B of the Evidence Act and handed over to the Haryana Police.

9. Thereafter, summons in the name of aforesaid journalist of the petitioner-Company were received at the office of the petitioner-Company to appear as a prosecution witness and the Company thought it fit to move an appropriate application under Section 311 Cr.P.C to aid the prosecution /trial by placing the correct facts on record and with a prayer that one Arunesh Kumar who is the Deputy General Manager and designated person

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-6-

at TGBCL be summoned as a prosecution witness being a concerned duly authorized person under whose control the IT systems were working and all recordings are stored and saved as part of the official records. However, since the prosecution had named the journalist Abhishek who was only a investigating reporter as a prosecution witness, the trial Court had summoned him for recording of the evidence and that was the reason as to why the petitioner-Company had to file an application under Section 311 for summoning the correct person who is authorised under Section 65-B of Indian Evidence Act for issuing of the necessary certificate and deposing before the Court for proving of the same. However, the said application was dismissed by the learned trial Court only on the ground that the petitioner-Company had no *locus standi* to file an application since he was a third person and alien to the case.

10. Learned Senior Counsel advanced arguments to submit that the scope of Section 311 Cr.P.C is very large and the controversy involved in the present case was with regard to allegations of forcible conversion and the criminal law was set into motion on the basis of the aforesaid telecast which was a part of the sting operation which was done by the petitioner-Company. He submitted that the subject matter pertains to video clipping which was telecasted at the news channel and rather the entire case is dependent upon the video clipping and the same was required to be produced and proved in accordance with law and it has to be verified and certified in accordance with the provisions of Section 65-B of the Indian Evidence Act. He submitted that the journalist namely Abhishek who

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-7-

although was an employee of the Company but he was not an authorized person for dealing with the technicalities and to verify and prove or even to issue a certificate under Section 65-B since he is not a person who is managing the entire computer system of the Company. Learned Senior Counsel submitted that on the other hand the person who is required to be summoned as a prosecution witness could be only the person who was managing the entire computer system namely Arunesh Kumar, Deputy General Manager who was competent to issue the certificate and to prove the same in the Court of law and in case the aforesaid Abhishek, journalist is required to produce the certificate and to prove the same, then it will be nothing but a futile exercise for the Court since it will not be in accordance with the provisions of Section 65-B of the Evidence Act. On the other hand, in case the competent person namely Arunesh Kumar, Deputy General Manager is summoned as a prosecution witness alongwith the certificate, then it will not be only in the interest of justice but his deposition will also go to the root of the matter for just adjudication and therefore an application under Section 311 Cr.P.C was maintainable in larger interests. He submitted that sub-Section (1) of Section 65-B provides for a non-obstante clause and is subject to sub-section (2) and sub-section (4) wherein various conditions have been laid down and it is only on the basis of the aforesaid conditions that a document by way of an electronic device can be proved or verified or certified under Section 65-B of the Evidence Act. He submitted that in the present case, the video clipping was in the control and management of the Company itself through its IT Department

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-8-

and the certification or verification can be done by the Company who was controlling the transmission and therefore it is evidence of the aforesaid person namely Arunesh Kumar, Deputy General Manager who was the competent person to give the certificate should be summoned as a prosecution witness and not the journalist who had no role to play with regard to the conduct and management of the I.T Department of the Company. He further submitted that the learned trial Court has dismissed the application of the petitioner-Company only on the ground of *locus standi* and maintainability by observing that the petitioner-Company was a third party and was alien to the case and therefore the petitioner-Company had no *locus standi* to file the present application. Learned Senior Counsel has however submitted that the scope of Section 311 Cr.P.C is very wide and therefore the application could not have been dismissed only on the aforesaid ground and was required to be adjudicated on merits.

11. Learned Senior Counsel has referred to following judgments in support of his case.

- (i) ***Varsha Garg Versus State of Madhya Pradesh and others [2022 SCC Online SC 986]***
- (ii) ***Mina Lalita Baruwa Versus State of Orissa and others [2013(16) SCC 173]***
- (iii) ***Zahira Habibulla H. Sheikh and another Versus State of Gujarat and others [2004(4) SCC 158]***
- (iv) ***Khatta Singh Versus CBI, Chandigarh and others, 2018(3) RCR (Cri.) 708***
- (v) ***Anvar P.V Versus P.K. Basheer and others [2014(10) SCC 473]***

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-9-

12. On the other hand, Ms. Nidhi Garg, learned Assistant Advocate General, Haryana as well as Mr. G.S. Sawhney, learned counsel appearing on behalf of respondent No.2 submitted that although the scope of Section 311 Cr.P.C is very wide but a person who is totally stranger to the case cannot file any application under the aforesaid section and therefore the petitioner-Company did not have any *locus standi* to file the application. They submitted that the learned trial Court has rightly summoned the prosecution witness which has been mentioned by the prosecution in the list of witnesses and therefore no occasion would arise for the learned trial Court to summon a person who is not a prosecution witness on the basis of an application which has been filed by a stranger and who is alien to the controversy. They submitted that the impugned order has been rightly passed by the learned trial Court and there is no illegality in the impugned order.

13. I have heard the learned counsels for the parties at length.

14. The issue involved in the present case is as to whether an application under Section 311 Cr.P.C would lie on behalf of a person who is neither victim nor the prosecution itself nor from the list of prosecution witnesses for summoning of a person as a prosecution witness whose testimony would go into the root of the matter or not.

15. The subject matter of the present FIR pertaining to allegations of forcible conversion is connected with the sting operation which was conducted by the petitioner-Company. The video of the sting operation was telecasted. Therefore on the face of it, it cannot be said that the subject

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881
 -10-

matter of telecast is not related to the subject matter of the FIR. After the investigation, the prosecution named one Abhishek as prosecution witness who is only a journalist in the petitioner-Company and a new person in the organization and was not connected with the IT Department or with the computer system. However, the person regarding which the application under Section 311 Cr.P.C has been filed by the petitioner-Company is one Arunesh Kumar who is Deputy General Manager and is a designated person in the IT Department of the petitioner-Company who extracted the requisitioned telecast in a pen drive to be handed over as prosecution evidence to the concerned Investigating Officer. Vide Annexure P-7, the aforesaid person namely Arunesh Kumar, Deputy General Manager has been duly authorised by the authorised representative of the Company to sign and issue certificate under Section 65-B of the Indian Evidence Act for providing electronic evidences for and on behalf of channels and digital platforms of the Company and submit the same before various offices and authorities as may be required by the Company from time to time. The aforesaid Annexure P-7 is reproduced as under:-

'To whomsoever it may concern

I, Jagdish Mulchandani, designated as Chief Financial Officer of Times Global Broadcasting Company Limited (TGBCL), part of the TV Division and a subsidiary company of Bennett, Coleman & Company Limited (the Company), by virtue of the powers granted to me, hereby severally authorize Mr. Vignan Kumar, Associate Vice President-T&B Operations, Mr. Arunesh Kumar, Deputy General Manager- T&B Operations and Mr. Satyaprasad Potham-Manager T&B Operations of TGBCL with the below mentioned powers, to perform the following, for and on behalf of the Company.

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881
 -11-

1. *To sign and issue certificate under Section 65B of the Evidence Act for providing electronic evidences for and on behalf of channels and digital platforms of the Company and submit the same before various offices and authorities as may be required by the Company from time to time.*
2. *To carry out such other tasks, duties and deeds as may be specifically required by the Company from time to time with respect of the above authority.*

This authorization shall be effect so long as Mr. Vignan Kumar, Mr. Arunesh Kumar and Mr. Satyaprasad Potham individually, continues to be in the employment of TGBCL or the same is modified, revoked, cancelled or withdrawn by the Company at its sole and absolute discretion.

For Bennett, Coleman & Company Limited (TV Division)

*Sd/-
 Jagdish Mulchandani
 Authorized Representative*

*Date: July 13, 2022
 Place: Mumbai'*

16. Section 65-B of the Indian Evidence Act was inserted by Act 21 of 2001 and provides for a non-obstante provision. Sub-section (1) provides that notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-12-

admissible.

17. Sub-Section (2) pertains to the conditions which have been referred to in sub-section (1) that such a computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer. It further provides for other conditions whereby it is so provided with regard to the operating of the computer system in the course of the ordinary activities.

18. Sub-section (4) of Section 65-B provides that in any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things i.e. identifying the electronic record containing the statement and describing the manner in which it was produced, giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer and dealing with any of the matters to which the conditions mentioned in sub-section (2) relate and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

19. The aforesaid provisions clearly provides that an information

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-13-

contained in an electronic record shall be deemed to be also a document if the conditions are satisfied. Those conditions are mentioned in sub-section (2) as aforesaid. Under sub-section (4) when a statement is required to be given in evidence by virtue of this section, then a certificate is to be issued which is to be signed by a person occupying a responsible official position in relation to the operation of relevant device or the management of the relevant activities which shall be an evidence of any matter stated in the certificate. In other words, a person who actually holds the position pertaining to the management of the relevant activities pertaining to the computer system and satisfying the conditions of sub-section (2) and (4) of Section 65-B is competent to issue certificate and to prove the same in the Court of law. In the present case, the person who has now been summoned as a prosecution witness namely Abhishek was not a competent person nor he was authorised regarding the same. He was neither incharge of the computer system nor he was operating or managing the computer system of the Company. However, on the other hand, a person who is sought to be summoned and prove the certificate under Section 65-B of the Indian Evidence Act i.e. Deputy General Manager namely Arunesh Kumar is rather the authorised person vide Annexure P-7 and also as per the petitioner-Company, he is a correct person to issue certificate under Section 65-B Indian of the Evidence Act and to prove the same. The certificate under Section 65-B and proving of the same, certainly goes to the root of the matter and therefore, the only person who is duly authorised regarding the same can be a competent witness in this regard.

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-14-

20. So far as the scope of the provision of Section 311 Cr.P.C is concerned, the learned Senior Counsel for the petitioner has referred to a number of judgments which are fully applicable in the present case.

21. In *Varsha Garg Versus State of Madhya Pradesh and others (Supra)*, the Hon'ble Supreme Court discussed the scope of Section 311 Cr.P.C whereby an application was filed at the instance of a victim. It was observed that the power under Section 311 Cr.P.C can be exercised at any stage of any inquiry, trial or other proceeding under the Cr.P.C. The latter part of Section 311 Cr.P.C states that the Court 'shall' summon and examine or recall and re-examine any such person if his evidence appears to the Court to be essential to the just decision of the case. The power contained in the aforesaid section is in broad terms and it must be read purposively to achieve the intent of the statute to aid in the discovery of truth. It was further held that broad powers under Section 311 Cr.P.C are to be governed by the requirement of justice and the Court is not hapless bystander in the derailment of justice but to the contrary, the Court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest. Para 32 and 37 of the aforesaid judgment are reproduced as under:-

32. This power can be exercised at any stage of any inquiry, trial or other proceeding under the Cr.P.C. The latter part of Section 311 states that the Court 'shall' summon and examine or recall and re-examine any such person "if his evidence appears to the Court to be essential to the just decision of the case. Section 311 contains a power upon the Court in broad terms. The statutory provision must be read purposively, to achieve the intent of the statute to aid in the discovery of truth.

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881
 -15-

37. The power of the court is not constrained by the closure of evidence. Therefore, it is amply clear from the above discussion that the broad powers under Section 311 are to be governed by the requirement of justice. The power must be exercised wherever the court finds that any evidence is essential for the just decision of the case. The statutory provision goes to emphasise that the court is not a hapless bystander in the derailment of justice. Quite to the contrary, the court has a vital role to discharge in ensuring that the cause of discovering truth as an aid in the realization of justice is manifest.

22. ***In Mina Lalita Baruwa Versus State of Orissa and others (Supra)***, it was observed by Hon'ble Supreme Court that inability of the trial Court in failing to take appropriate action as and when it was brought to its notice about the fallacy in the oral version, would certainly cause a serious miscarriage of justice, if allowed to remain. It was observed that it is imperative for the State and the prosecution to ensure that no stone is left unturned and rather it is the duty and responsibility of the Court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded is in accordance with law and reflect upon every bit of vital information placed before it. The Hon'ble Supreme Court also considered the right of a private person to participate in the criminal proceedings which although has its own limitations but in order to arrive at a just decision to resort to an appropriate measure befitting the situation in the matter of examination of witnesses, the trial Court should examine whether the invocation of Section 311 Cr.P.C was required to arrive at a just decision or not. Para 19 and 21 of the aforesaid judgment are reproduced as under:-

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-16-

19. *In criminal jurisprudence, while the offence is against the society, it is the unfortunate victim who is the actual sufferer and therefore, it is imperative for the State and the prosecution to ensure that no stone is left unturned. It is also the equal, if not more, duty and responsibility of the court to be alive and alert in the course of trial of a criminal case and ensure that the evidence recorded in accordance with law reflect every bit of vital information placed before it. It can also be said that in that process the court should be conscious of its responsibility and at times when the prosecution either deliberately or inadvertently omit to bring forth a notable piece of evidence or a conspicuous statement of any witness with a view to either support or prejudice the case of any party, should not hesitate to interject and prompt the prosecution side to clarify the position or act on its own and get the record of proceedings straight. Neither the prosecution nor the court should remain a silent spectator in such situations. Like in the present case where there is a wrong statement made by a witness contrary to his own record and the prosecution failed to note the situation at that moment or later when it was brought to light and whereafter also the prosecution remained silent, the court should have acted promptly and taken necessary steps to rectify the situation appropriately. The whole scheme of the Code of Criminal Procedure envisages foolproof system in dealing with a crime alleged against the accused and thereby ensure that the guilty does not escape and innocent is not punished. It is with the above background, we feel that the present issue involved in the case on hand should be dealt with.*

21. *Having referred to the above statutory provisions, we could discern that while under Section 301(2) the right of a private person to participate in the criminal proceedings has got its own limitations, in the conduct of the proceedings, the ingredients of Section 311 empowers the trial Court in order to arrive at a just decision to resort to an appropriate measure*

CRM-M-52970-2022 (O&M)
 CRM-M-45011-2022 (O&M) and
 CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-17-

befitting the situation in the matter of examination of witnesses. Therefore, a reading Sections 301 and 311 together keeping in mind a situation like the one on hand, it will have to be stated that the trial Court should have examined whether invocation of Section 311 was required to arrive at a just decision. In other words even if in the consideration of the trial Court invocation of Section 301(2) was not permissible, the anomalous evidence deposed by PW-18 having been brought to its knowledge should have examined the scope for invoking Section 311 and set right the position. Unfortunately, as stated earlier, the trial Court was in a great hurry in rejecting the appellant's application without actually relying on the wide powers conferred on it under Section 311 Cr.P.C for recalling PW-18 and ensuring in what other manner, the grievance expressed by the victim of a serious crime could be remedied. In this context, a reference to some of the decisions relied upon by the counsel for the appellant can be usefully made.

23. In ***Zahira Habibulla H. Sheikh and another Versus State of Gujarat and others (Supra)***, the Hon'ble Supreme Court has observed that the Courts have to take a participatory role in a trial and they are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence-collecting process. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that the ultimate objective i.e. truth is arrived at. The power under Section 311 given to the Court is not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any irretrievable or immeasurable

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-18-

damage to the cause of society, public interest and miscarriage of justice and therefore recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision of the case. Para 43 and 46 of the aforesaid judgment are reproduced as under:-

43. The Courts have to take a participatory role in a trial. They are not expected to be tape recorders to record whatever is being stated by the witnesses. Section 311 of the Code and Section 165 of the Evidence Act confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. They have to monitor the proceedings in aid of justice in a manner that something, which is not relevant, is not unnecessarily brought into record. Even if the prosecutor is remiss in some ways, it can control the proceedings effectively so that ultimate objective i.e. truth is arrived at. This becomes more necessary where the Court has reasons to believe that the prosecuting agency or the prosecutor is not acting in the requisite manner. The Court cannot afford to be wishfully or pretend to be blissfully ignorant or oblivious to such serious pitfalls or dereliction of duty on the part of the prosecuting agency. The prosecutor who does not act fairly and acts more like a counsel for the defence is a liability to the fair judicial system, and Courts could not also play into the hands of such prosecuting agency showing indifference or adopting an attitude of total aloofness.

46. Ultimately, as noted above, ad nauseam the duty of the Court is to arrive at the truth and subserve the ends of justice. Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to prevent any

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-19-

irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.

24. In ***Khatta Singh Versus CBI, Chandigarh and others (Supra)***, an application under Section 311 Cr.P.C was moved by the witness for recalling him as a witness in the case. The said application was also opposed by the accused on the ground that the application was not maintainable because he was neither the complainant nor it was forwarded by the Special Public Prosecutor to the CBI. However, a Co-ordinate Bench of this Court observed that it is bounden duty of the Court to step in by enforcing law so as to see that the truth does not become a casualty at the hands of procedures, which are being sought to be projected in the form of fetters in exercise of discretionary powers of the Court. However, the power has to be exercised with great care and caution.

25. In ***Anvar P.V Versus P.K. Basheer and others (Supra)***, the Hon'ble Supreme Court dealt with the scope of Section 65-B of the Evidence Act and observed that an electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Therefore in the case of CD, VCD, Chip etc., the same shall be accompanied by a certificate in terms of Section 65-B of the Evidence Act obtained at the time of taking without which the secondary evidence pertaining to that electronic record was inadmissible.

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-20-

26. In the facts and circumstances of the present case, the petitioner-Company is neither the complainant nor is a victim but is a telecasting company who had conducted a sting operation and the video was telecasted which bearing has got direct bearing upon the subject matter of the present FIR. This Court is of the view that the subject matter of the telecast goes to the root of the matter. The scope of Section 311 Cr.P.C is very wide as has been so held in a plethora of judgments as discussed above. The journalist namely Abhishek who has been summoned as a prosecution witness is not an authorized person, according to the petitioner-Company, whereas the Deputy General Manager namely Arunesh Kumar is an authorised person to issue a certificate and prove the same under Section 65-B of the Evidence Act vide Annexure P-7 which is an authorization letter. Therefore, this Court is of the view that even if the petitioner is not a victim nor complainant but he could have certainly filed application under Section 311 Cr.P.C on the basis of facts and circumstances.

27. It is therefore held that for the purpose of filing of application under Section 311 Cr.P.C, it is not necessary that the applicant has to be either complainant or prosecution or victim or a listed witness. The provisions of Section 311 Cr.P.C can be invoked by any other person who is able to show that the evidence of witness sought to be examined will be necessary for just decision of the case. Rather, a persual of Section 311 Cr.P.C would show that it is the duty of Court to apply its mind to ascertain as to whether testimony of person sought to be summoned is required for just

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-21-

decision of the case. However in such like cases, power has to be exercised in a very careful, diligent and judicious manner for which cogent and strong reasons should be recorded.

28. The learned trial Court vide impugned order dated 20.12.2022 (Annexure P-1) could not have dismissed the application of the petitioner-Company on the ground that the application was filed by a third party who is alien to the case and therefore did not have any *locus standi* to file the application. Rather the learned trial Court ought to have applied its mind and considered the application on its merits without sticking to the procedural objection that the petitioner-Company was a third party. The trial Court ought to have considered the same in the light of the nature of the evidence which is sought to be produced vis-a-vis its impact upon the subject matter of the case. Therefore the impugned order dated 20.10.2022 (Annexure P-1) deserves to be set aside.

29. Consequently, the present petition is allowed. The impugned order dated 20.10.2022 (Annexure P-1) is hereby set aside and quashed. The learned trial Court is directed to decide the application filed by the petitioner-Company vide Annexure P-6 afresh on merits and in the light of the aforesaid judgments and also in the light of observations made above and strictly in accordance with law.

CRM-M-45011-2022

30. The present is a third petition filed under Section 439 of the Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No. 126 dated 21.08.2021, under Sections 153-A, 295-A, 298, 323, 406

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-22-

and 506 IPC, registered at Police Station Rozaka Meo, District Mewat.

31. Learned counsel for the petitioner has submitted that the petitioner is in custody from 28.09.2021 which is about 1 year and 4 months and 16 out of 34 witnesses have already been examined. He submitted that the name of the petitioner had come forth in the supplementary statement of the complainant recorded during the course of investigation. He submitted that the petitioner was not named in the FIR at initial stages and now 16 out of 34 witnesses have already been examined, he may be considered for the grant of regular bail, although the present is a third petition filed by the petitioner but earlier only four witnesses had been examined. He also submitted that most of the witnesses who have been examined have turned hostile and now since they have been examined, there cannot be any apprehension with the State that the petitioner may flee from justice. He submitted that the petitioner is not involved in any other case except for a similar other second case which was registered against him on the next day i.e. FIR No.208 dated 22.08.2021.

32. On the other hand, Ms. Nidhi Garg, learned Assistant Advocate General, Haryana has submitted that it is correct that the petitioner is in custody from 28.09.2021 and 16 out of 34 witnesses have already been examined. She has however submitted that the allegations against the petitioner are serious in nature, although he was initially not named in the FIR. She further submitted that there is one more case against the petitioner i.e. FIR No.208 dated 22.08.2021 in which also similar kind of allegations have been made with regard to forcible conversion and

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-23-

therefore the petitioner is not entitled for the grant of regular bail. She further submitted that in case the petitioner is released on bail, then he may abscond or may influence the remaining witnesses.

33. I have heard the learned counsel for the parties.

34. The petitioner has already faced incarceration for more than 1 year and 4 months and now 16 out of 34 witnesses have been examined, as per the learned counsel for the parties. The petitioner is stated to be not involved in any other case except for one more FIR which was lodged on the next day i.e. on 22.08.2021 pertaining to the similar kind of allegations against the petitioner with regard to forcible conversion. On a query being raised to the learned State counsel as to what was the material on the basis of which such an apprehension is based to which she could not reply.

35. In view of the period of custody of the petitioner and the fact that 16 out of 34 witnesses have already been examined, this Court deems it fit and proper to grant regular bail to the petitioner.

36. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

37. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

CRM-M-60080-2022

38. The present is a third petition filed under Section 439 of the

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881

-24-

Code of Criminal Procedure for the grant of regular bail to the petitioner in FIR No.208 dated 22.08.2021, under Sections 153-A, 295-A, 342 and 506 IPC, registered at Police Station City Nuh, District Nuh (Mewat).

39. Learned counsel for the petitioner has submitted that the petitioner is in custody from 24.08.2021 which is about 1 year and 5 months and 8 out of 31 witnesses have already been examined. He submitted that the name of the petitioner had come forth in the supplementary statement of the complainant recorded during the course of investigation. He submitted that the petitioner was not named in the FIR at initial stages and now 8 out of 31 witnesses have already been examined, he may be considered for the grant of regular bail. He also submitted that most of the witnesses who have been examined have turned hostile and now since they have been examined, there cannot be any apprehension with the State that the petitioner may flee from justice. He submitted that the petitioner is not involved in any other case except for a similar other second case which was registered against him on the next day i.e. FIR No.126 dated 21.08.2021.

40. On the other hand, Ms. Nidhi Garg, learned Assistant Advocate General, Haryana has submitted that it is correct that the petitioner is in custody from 24.08.2021 and 8 out of 31 witnesses have already been examined. She has however submitted that the allegations against the petitioner in the present case as well are serious in nature, although he was initially not named in the FIR and also submitted that there is one more case against the petitioner i.e. FIR No.126 dated 21.08.2021 in

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-25-

which also similar kind of allegations have been made with regard to forcible conversion and therefore the petitioner is not entitled for the grant of regular bail. She further submitted that in case as well, in case the petitioner is released on bail, then he may abscond or may influence the remaining witnesses.

41. I have heard the learned counsel for the parties.

42. The petitioner has already faced incarceration for more than 1 year and 5 months and now 8 out of 31 witnesses have been examined, as per the learned counsel for the parties. The petitioner is stated to be not involved in any other case except for one more FIR which was lodged one day prior to the present case i.e. on 21.08.2021 pertaining to the similar kind of allegations against the petitioner with regard to forcible conversion. Again, on a query being raised to the learned State counsel in this case as well as to what was the material on the basis of which such an apprehension is based to which she could not reply.

43. In view of the period of custody of the petitioner and the fact that 8 out of 31 witnesses have already been examined, this Court deems it fit and proper to grant regular bail to the petitioner.

44. Consequently, the present petition is allowed. The petitioner shall be released on regular bail subject to furnishing bail bonds/surety to the satisfaction of the learned trial Court/Duty Magistrate concerned.

45. However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose

CRM-M-52970-2022 (O&M)
CRM-M-45011-2022 (O&M) and
CRM-M-60080-2022 (O&M)

2023:PHHC:046881
-26-

of deciding the present petition only.

29.03.2023

(JASGURPREET SINGH PURI)
JUDGE

rakesh

Whether speaking : Yes/No
Whether reportable : Yes/No

