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

**268**

**Date of decision: 23.04.2018**

**CRR-3592-2017 &**
**CRM-31645-2017 & CRM-33766-2017 &**
**CRM-36245-2017 & CRM-40212-2017 &**
**CRM-40373-2017**

***KHATTA SINGH .....PETITIONER***

***VS.***

***C.B.I. CHANDIGARH AND OTHERS .....RESPONDENTS***

**CRM-6237-2018 and**
**CRR-274-2018**

***KHATTA SINGH ...PETITIONER***

***VS.***

***C.B.I. CHANDIGARH AND OTHERS ...RESPONDENTS***

***CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH***

Present: Mr. Navkiran Singh, Advocate,
for the petitioner.

Mr. Sumeet Goel, Retained counsel for CBI
with Mr. S.S.Yadav, DLA, CBI, Chandigarh.

Mr. S.K.Garg Narwana, Senior Advocate,
with Mr. Vishal Garg Narwana, Advocate,
for respondent No. 2.

MR. A.P.S.Bhinder, Advocate,
for respondents No. 3 and 5.

Mr. Ravneet Singh Joshi, Advocate,
for respondent No. 4.

Mr. Mohinder Singh Joshi, Advocate,
for respondent No. 6.

Mr. Vinod Ghai, Senior Advocate,
with Mr. Simrandeep S. Sandhu, Advocate,
for respondent No. 7.

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***AUGUSTINE GEORGE MASIH, J.***

***CRM-36245-2017***

Application is allowed subject to just exceptions. Reply on behalf of respondent-CBI is taken on record.

***CRM-40212-2017***

Application is allowed subject to just exceptions. Filing of certified/typed copies of Annexure R-7/1 to R-7/22 is dispensed with and the same are taken on record.

***CRM-40373-2017***

Application is allowed subject to just exceptions. Filing of certified/true typed copies of Annexure R-2/1 to R-2/2 is dispensed with and the same are taken on record.

**CRR-3592-2017 (O&M)**

By this order, I propose to decide two revision petitions i.e. CRR No. 3592 of 2017 titled as **Khatta Sing**h vs. **C.B.I. Chandigarh and others** and CRR No. 274 of 2018 titled as **Khatta Sing**h vs. **C.B.I. Chandigarh and others,** preferred by Khatta Singh, who appeared as a Prosecution Witness No. 31 in RC No. 8 and RC No. 10, CBI vs. Baba Gurmeet Ram Rahim Singh and others challenging the order passed by the learned Special Judge (CBI) Haryana at Panchkula dated 25.09.2017 in RC-8(S)/2003/CBI/SCB/CHG., dated 09.12.2003 under Sections 302/120-B/506 IPC and order dated 06.01.2018 in RC-10(S)/2003/CBI/SCB/CHG. Dated 24.07.2008 under Sections 302/307/120-B IPC and Sections 25 and 27 of the Arms Act, wherein two separate applications preferred by the petitioner under Section 311 Cr. P.C. for recalling him as a witness in the case stand dismissed.


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Counsel for the parties have accepted that the statement given by the petitioner in these two above referred cases was common and, therefore, these cases can be heard together and decided by a single order. Counsel for the parties have, therefore, addressed their arguments in Criminal Revision No. 3592 of 2017 as the application moved by the petitioner under Section 311 Cr. P.C. is based upon identical facts, grounds and reasons and the order passed by the trial Court is also similarly worded and based upon identical reasons.

Briefly, the petitioner in his application has pointed out that he is an ex-devotee of *Dera Sacha Sauda* and had been working as a driver on the bus, which was being used by Baba Gurmeet Ram Rahim Singh (hereinafter referred to as 'Dera Chief')-respondent No. 1 to travel outside the *Dera.* He has personal knowledge about the commission of crime and the circumstances which led to the murder of Ranjit Singh and Ram Chander Chhatarpati, a Journalist. On the basis of an order passed by the Punjab and Haryana High Court on 10.11.2003, the matter was referred to the CBI for investigation. Charge-sheet was filed on 30.07.2007. Statement of the petitioner was recorded by Sh. M.Narayanan, Deputy Inspector General of Police, CBI and the Chief Investigating Officer of the case against *Dera Sacha Sauda* under Section 161 Cr.P.C. on 21.06.2007. Petitioner, thereafter, volunteered and got recorded his statement under Section 164 Cr.P.C. before the Judicial Magistrate, Ist Class, Chandigarh on 22.06.2007.

It is asserted that the petitioner appeared as a prosecution witness on 11.02.2012 i.e. after a period of almost five years but by then, Baba Gurmeet Ram Rahim Singh being the Dera Head had garnered large


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following of devotees with political leaders of all parties frequenting the Dera. Dera Chief because of his political and mass clout was provided security guards by the Central Government and the State Governments of Punjab and Haryana, which created a sense of insecurity amongst the people like the petitioner. He, thus, could not come out and speak the truth about the criminal activities indulged in by the Dera Chief and the others inside and outside the Dera premises. The Dera Chief had diehard followers who were ready to kill or die on his command. The co-accused, it is alleged, had acted on his direction and dictate to kill Ranjit Singh and Ram Chander Chhatarpati. Because of this sense of insecurity and threat, the petitioner, when appeared before the trial Court on 11.02.2012 as Prosecution Witness No. 31, resiled from his statement which he had given to the CBI on 21.06.2007 as also from his statement under Section 164 Cr. P.C. dated 22.06.2007. However, with the conviction and sentence of the Dera Head in the rape case of sadhvis inside the Dera on 25.08.2017 and he having been confined in jail for a period of 20 years despite unrest and public disorder caused by the followers of Dera, petitioner gained confidence and feeling a sense of security, has gathered strength to speak out the truth before the Court. On creation of a threat-free environment, petitioner moved an application under Section 311 Cr.P.C. for his recall as a witness on 14.09.2017. It was asserted that the trial was still in progress and no prejudice would be caused to the accused as there would have been ample opportunities to cross examine him in case the application is allowed as the Court has ample powers under Section 311 Cr. P.C. to recall any witness at any stage of trial and re-examine any person if his evidence is essential for the just decision of the case. It is contended that the petitioner is a material


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witness and his evidence would be essential for the just decision of the case as he is a witness of first hand information regarding conspiracy to eliminate Ranjit Singh and Ram Chander Chhatarpati at the behest of the Dera Chief against Baba Gurmeet Ram Rahim Singh and is also a witness to the motive of ordering of their elimination. Therefore, recall of the petitioner as witness would ensure just decision of the case.

The said application was not opposed by the CBI, which is the prosecuting agency rather it had supported the said application by asserting that there was fear factor in the mind of the petitioner during the relevant time and now that he has come out of it and there has been no delay on his part in approaching the Court, his evidence would facilitate just decision of the case.

The said application was, however, opposed by the accused on the ground that the application is not maintainable as he is neither the complainant nor has it been forwarded by the Special Public Prosecutor to CBI. There has been concealment of material documents executed by the petitioner prior to making statement under Section 164 Cr. P.C. which falsifies the contents of the application preferred now by the petitioner. It has been asserted that the occurrence took place on 10.07.2002 and thereafter, the first charge-sheet was filed where Khatta Singh, the applicant-petitioner, did not figure as a witness. However, in the supplementary challan, which has been preferred erring the Dera Chief as an accused, petitioner was mentioned as a witness. It is asserted that while appearing in the Court as PW-31, petitioner has categorically denied each and every portion of his statement given to the DIG, CBI on 21.06.2007. He has even gone to the extent of denying the truthfulness of the version


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contained in statement under Section 161 Cr. P.C. He has been declared hostile by the Public Prosecutor and has been examined on several dates spanning for a period of almost one month but he never complained of any threat or pressure put on him while denying the truthfulness of all his previous statements rather had produced voluntarily various documents in Court, which are complaints relating to the pressure being put on him by the prosecution. There has been almost five years since he was examined as a witness and further, the case is at the last stage when the arguments are going on with the evidence of the defence also having concluded, moving of an application at this juncture would prejudice the right of the accused. Nothing has been mentioned with regard to any effort on the part of the petitioner to approach any authority regarding threat, fear or pressure upon him by or on behalf of the accused for deposing in the Court. It is not even mentioned as to who had threatened him and when. It is asserted that in case, the present application is allowed, then there will be denovo trial thereby delaying the matter for indefinite time as the incidence is of the year 2002 and the trial is pending for more than 10 years, which would amount to denying the accused the right of speedy trial.

On considering the arguments put forth by the counsel for the parties, learned trial Court had primarily rejected the application vide the impugned orders dated 25.09.2017 and 06.01.2018 respectively on the ground of delay of almost five years on the part of the petitioner for having approached the Court and non-mentioning as to when and by whom or on whose behest, he had been threatened. He has not mentioned regarding lodging of any report with the authority. The Court has emphasized that the petitioner had remained silent for a period of more than five years and the


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aspect of expeditious trial would be natural casualty where it is pending for more than 10 years.

Counsel for the petitioner has referred to the application, which has been filed by the petitioner to reassert the facts and the reasons for having approached the Court now after recording his evidence in the Court in 2012. Emphasizing upon the power of the Court, which is conferred under Section 311 Cr. P.C. with regard to the recall of the witnesses, he has asserted that the Court has wide powers. He has referred to the various judgments for amplifying the jurisdiction of the Court for exercise of its powers under Section 311 Cr. P.C. of which, primary being **Mohanlal Shamji Soni** vs. **Union of India and another**, 1991 (3) RCR (Criminal) 182, where the Hon'ble Supreme Court had summed up the law on the subject. Reference has also been made to the judgment in **Mannan SK and others** vs. **State of West Bengal and another,** 2014 (13) SCC 59, **Zahira Habibulla H. Sheikh and another** vs. **State of Gujarat and others,** 2004 (2) RCR (Criminal) 836 and a Single Bench judgment of this Court in **Khushwinder Singh and another** vs. **State of Punjab,** 2007 (1) RCR (Criminal) 531, where in similar circumstances when an application under Section 311 Cr. P.C. for recalling of witness was moved by the witness himself asserting that he was threatened and was forced to give false evidence and said threat having ceased to exist because of the death of the accused who had threatened him, it would not amount to filling the lacunae in a prosecution case. The primary emphasis of the counsel for the petitioner is that the duty, which is cast on the Criminal Court, is to find out the truth and for that purpose, the Court has been given widest possible powers to be exercised in a manner where the interest of justice is not


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allowed to be a casualty, meaning thereby that it is not only the duty of the Court to do justice but also to ensure that the justice is being done. It is asserted that the guiding principle would be the exigency of the situation and fair play and good sense which would guide and be the determinative factor in coming to the conclusion as to whether the evidence appears to be essential for the just decision of the case, obviously, keeping in view the interest of the accused as well, so that no prejudice is caused to him. He, in the given facts and circumstances especially the threat perception, asserts that the application should have been allowed by the trial Court in the interest of justice and, therefore, the impugned orders deserve to be set aside.

Learned counsel for the CBI has supported the counsel for the petitioner and has relied upon the judgments, as referred to by the counsel for the petitioner and has also referred to the judgments of the Hon'ble Supreme Court in **Rajaram Prasad Yadav** vs. **State of Bihar and another,** 2013 (3) RCR (Criminal) 726, **Zahira Habibullah Sheikh and another** vs. **State of Gujarat and others,** 2006 (2) RCR (Criminal)448 and also **Ratanlal** vs. **Prahlad Jat and others,** 2017 (4) RCR (Criminal) 410. He asserts that the power under Section 311 Cr. P.C. can be exercised by the Court on its own without there being any application moved by the prosecution or the complainant. The discretion conferred upon the Court is unfettered except for the rider provided for under the provisions of the Statute itself i.e. Section 311 Cr. P.C., which refers to evidence which appears to be essential for the just decision of the case. He contends that the petitioner is a material witness and has highlighted the reasons for having so deposed before the Court on the earlier occasions and that the said threat


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having ceased to now exist, he is ready to bring out the truth before the Court and, therefore, he prays that the application of the petitioner be allowed.

On the other hand, Mr. Vinod Ghai, Senior Advocate, who appears for respondent No. 7and Mr. S.K.Garg Narwana, Senior Advocate, who appears for respondent No. 2, have reiterated the stand, which has been taken in the pleadings before the trial Court which are referred to above. They have emphasized that nothing has been mentioned by the petitioner in his application as to who had given him threat and when. No specific date or incident has been mentioned. Only general assertions have been made in the application which cannot be made the basis for coming to a conclusion that there was any threat or pressure upon the petitioner for not speaking the truth. They have made an extensive reference to the evidence given by the petitioner in the trial Court as also the cross-examination to assert that the petitioner had indeed no threat and had given his statement voluntarily before the Court. Counsel for the CBI had, with an intention to impeach the credibility of the witness, cross-examined him at length on many dates and his evidence runs into 35 pages. They assert that not only the statement of the accused under Section 313 Cr. P.C. stand recorded but the defence evidence also stands concluded. They assert that grave prejudice would be caused to the accused, in case the present application is allowed and in any case, they assert that the interest of justice is in favour of the accused and the discretion, which has been conferred upon the Court, needs to be exercised in a just and fair manner keeping in view the interest of not only the prosecution but the accused as well. The delay in the trial is also asserted as a ground for not permitting the present application to be allowed


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as the alleged incident is more than 15 years old and by allowing the present application it would further delay the conclusion of the trial. In the end, they have asserted that 60 witnesses have been examined by the prosecution and except for the petitioner, no other witness has turned hostile and, therefore, it cannot be said that there was any threat as otherwise, the other witnesses would have also not supported the case of the prosecution. They, on this basis, contend that there was no threat to the petitioner at all, rather, now he has turned around and moved an application under Section 311 Cr. P.C., which cannot be permitted at this belated stage and that too, without any basis. In support of their assertions, they have placed reliance upon the judgments which have been referred to by the counsel for the petitioner apart from others i.e. **Mohanlal Shamji Soni** vs. **Union of India and another**, 1991 (3) RCR (Criminal) 182, **Rajaram Prasad Yadav** vs. **State of Bihar and another,** 2013 (3) RCR (Criminal) 726, **Manjit Kaur and others** vs**. State of Punjab**, 2005 (1) RCR (Criminal) 572, **Mannan SK and others** vs. **State of West Bengal and another,** 2014 (13) SCC 59, **Zahira Habibulla H. Sheikh and another** vs. **State of Gujarat and others,** 2004 (2) RCR (Criminal) 836, **Hanuman Ram** vs. **The State of Rajasthan and others**, 2008 (4) RCR (Criminal) 823, **Gian Chand and others** vs. **State of Haryana**, 2013 (3) Criminal Court Cases 736, **V.K.Mishra and another** vs. **State of Uttarakhand and another**, 2015 (3) RCR (Criminal) 899, **C.Muniappan and others** vs. **State of Tamilnadu,** 2010 (4) RCR (Criminal) 268 and a judgment of Allahabad High Court in **Smt. Jaitoon** vs. **Salimuddin and another**, 1987 (2) Crimes 194 and a Single Bench judgment of this Court in **Khushwinder Singh and another** vs. **State of Punjab,** 2007 (1) RCR (Criminal) 531.


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Counsel for the other respondents have also emphasized upon the factual aspects and the non-maintainability of the application and prayed for dismissal of the revision petitions.

I have considered the submissions made by the counsel for the parties and with their able assistance, have gone through the impugned order and the documents, which have been placed on record.

To understand the powers, which have been given to the trial Court under the Statute, reference to the provision itself would be essential. Section 311 Cr. P.C. reads as follows:-

> "311. Power to summon material witness, or examine person present. Any Court may, at any stage of any enquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

A reading of the above Section would show that there are two parts in it. The first part is primarily permissive one, which gives discretionary authority to the Court enabling it to exercise its powers at any stage of inquiry, trial or other proceedings under the Code. It can summon any person as a witness, examine any person in attendance, who may not even be summoned as a witness and can recall and re-examine any person already examined. This power could be put into service at a stage when the parties have after leading their evidence closed the same and even when they had concluded their final arguments, meaning thereby that the


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discretion of the Court can be exercised any time prior to the pronouncement of the judgment. This is because in the first part, the word used is 'may'. However, while exercising that discretionary powers under the first part, the second part mandates and imposes an obligation on the Court either to summon, examine or recall or re-examine any person, if, in the opinion of the Court, evidence of such person appears to be essential to the just decision of the case but this power also is to be exercised prior to the final pronouncement of the judgment. More the discretion given to the Court, more discipline and circumspection is required to be exercised by the Court while invoking such powers and should be in consonance with the provisions of the Statute.

Hon'ble Supreme Court, in the judgment of Mohanlal Shamji Soni' case (supra), on which reliance has been placed by both the parties, has, in paras 9, 10 and 18 while dealing with the powers of the Court under Section 311 Cr. P.C., observed as follows:-

> "9. The very usage of the words such as 'any court', 'at any stage', or 'of any enquiry, trial or other proceedings', 'any person' and 'any such person' clearly spells out that this section is expressed in the widest possible terms and do not limit the discretion of the Court in any way. However, the very width requires a corresponding caution that the discretionary power should be invoked as the exigencies of justice require and exercised judicially with circumspection and consistently with the provisions of the Code. The second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh



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evidence to be obtained is essential to the just decision of the case.

10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or witnesses on their sides. Nonetheless if either of the parties with-holds any evidence which could be produced and which, if produced, be unfavorable to the party withholding such evidence, the court can draw a presumption under illustration (g) to Section 114 of the Evidence Act. In such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of


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Section 540 of the Code (Section 311 of the New Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated.

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18. The next important question is whether Section 540 gives the court carte-blanche drawing no underlying principle in the exercise of the extra-ordinary power and whether the said Section is unguided, uncontrolled and uncanalised. Though Section 540 (Section 311 of the new Code) is, in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the court should be exercised, or with regard to the manner in which they should be exercised, that power is circumscribed by the principle that underlines Section 540, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Therefore, it should be borne in mind that the aid of the section should be invoked only with the object of discovering relevant facts or obtaining proper


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> proof of such facts for a just decision of the case and it must be used judicially and not capriciously or arbitrarily because any improper or capricious exercise of the power may lead to undesirable results. Further it is incumbent that due care should be taken by the court while exercising the power under this section and it should not be used for filling up the lacuna left by the prosecution or by the defence or to the disadvantage of the accused or the cause serious prejudice to the defence of the accused or to give an unfair advantage to the rival side and further the additional evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties."

The Court has further proceeded to refer to various judgments and summed up the principle in para-27 as follows:-

> "27. The principle of law that emerges from the views expressed by this court in the above decisions is that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the court must obviously be dictated by exigency of the situation, and fair-play and good sense appear to be the only safe guides and that only the requirements of justice command the examination of any person which would depend on the facts and circumstances of each case."

It would not be out of way to mention here that the Hon'ble Supreme Court has, relying upon the judgment in **Rameshwar Dayal** vs.


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**State of U.P.,** 1978 (2) SCC 518, concluded that where any fresh evidence is admitted against the accused, the accused should be given an opportunity to rebut that evidence as this right is engraved in the principles of natural justice as the Statute has armed the Court with all the powers to do full justice between the parties which cannot be done until both the parties are properly heard. Maxim of *audi alteram partem* was sought to be engraved and inherent in the provisions contained under new Section 311 Cr. P.C. These principles have been reiterated in all subsequent judgments, which have been passed by the Supreme Court and the various High Courts, of course, applying those principles on the given facts and circumstances of each case.

It would not be out of way to mention here that the Hon'ble Supreme Court, in the case of **Zahira Habibulla H. Sheikh and another** vs. **State of Gujarat and others,** 2004 (2) RCR (Criminal) 836 in para-46 thereof, has observed that it is a bounden duty of the Court to arrive at the truth and sub-serve the ends of justice. Observing with caution that Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness and this power is only given to the Court which is required to exercise the same not merely at the bidding of any party or person but is a power conferred and discretion vested in the Court so as to prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by the 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.

It is, thus, the bounden duty of the Court to step in by enforcing


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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, this power has to be exercised with great care and caution.

It can, thus, be concluded that the broad principles are laid down under the Statute itself which has further been elaborated and explained by the Courts in various judgments with the cardinal rule being that these principles would be applied uniformly depending upon the facts and circumstances of each case. No general principle or rule can be laid down in exercise of such discretionary powers of the Court except that the only guide for the Court would be the object of arriving at a just decision of a case with a further rider that the evidence appears to be essential for the said purpose. In case a decision is reached by the Court that the evidence is essential for the just decision of the case, then the Court is bound to summon and examine or recall and re-examine any such person whether he is a witness or not and has been examined earlier or not and examine or recall any person including a person who is in attendance.

Now moving on to the present case, this Court would not like to go into the details with regard to the statements, which have been given by the petitioner as recorded under Section 161 Cr. P.C., 164 Cr. P.C. and his evidence recorded by the Court as PW-31 especially in the light of the fact that any observations made by this Court at this stage in this regard may influence the outcome of the decision pending before the trial Court. Therefore, the Court would restrict and limit itself to the extent of the application, which has been preferred by the petitioner under Section 311 Cr. P.C.


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As far as the first objection of the counsel for the accused that the present application, at this stage when the evidence of the parties stands concluded, defence of the accused stands exposed and the case is at the stage of arguments, suffice it to say that keeping in view the language of the Section as also the law, which has been laid down by the Supreme Court and referred to above, the application would be maintainable prior to the pronouncement of the judgment. However, it would be a different aspect whether the said application has to be accepted or rejected depending upon the facts and circumstances of each case.

Similar would be the position with regard to the objection of the counsel for the accused that the application of the petitioner would not be maintainable as he is neither the complainant nor has the application being filed by the prosecution. As is apparent from the language of the provisions itself, it is the discretion of the Court to be exercised in the given facts and circumstances whether the evidence, which is likely to be received by it from the person or persons as have been provided for under the Section itself, would be essential to the just decision of the case. It is open to the Court to suo moto exercise such powers and obviously, from whatever source, the Court receives information with regard to its satisfaction about the evidence and its essentiality for the decision of the case, does not really make any difference, it can be from any source. The Court has a duty to call the attention of the witness to it, whether it makes for or against the prosecution as the aim of the Court being neither to punish the innocent nor screen the guilty, but to administer the law correctly. Counsel seeks only for the success of his client but the Judge must watch that the justice triumphs, meaning thereby that the paramount principle underlying


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provision under Section 311 Cr. P.C. is to discover or to obtain proper proof of relevant facts in order to meet the requirements of justice.

The contention of the counsel for the accused that no specific date or incidence has been given as to when and by whom has the threat been given to the petitioner, there can be no doubt that the application is bereft of such details, however, reasons have been given and explained as to why the petitioner was unable to earlier approach the Court. The Court would not like to comment upon the documents, which have been produced by the petitioner during his cross-examination before the Court, which are said to be addressed to various authorities pointing out the coercion and pressure exercised upon the petitioner by the prosecuting agency, suffice it to say that in case there had indeed been a threat to the petitioner, as he asserts now from the accused, such letters could have been addressed by him at the behest and under coercion and threat of the accused. It is obvious and apparent that when the petitioner gave his statement under Sections 161 and 164 Cr. P.C., it was in the year 2007 whereas his evidence in Court was recorded in February, 2012 after a period of almost five years, during which period, it is asserted that the *Dera* prospered into a high profile *Dera* having a large following of blind disciples who would act as per the whims and fancies of the Dera Head. The Dera Head also, by now, gathered influence in the political arena where political leaders from almost all political parties frequently visited the *Dera* to pay their obeisance to the Dera Head as he had become a law unto himself, which is apparent from the fact that the security guards were provided to him, as per the assertions, by the Central Government and the Governments of the States of Punjab and Haryana. With this political clout, following increased influence and financial


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strength, sense of insecurity amongst the people like the petitioner cannot be ruled out and, in these circumstances, it cannot be said that the petitioner would not have been influenced with the changed circumstances especially when the Dera Head had devoted followers who would kill or die on his command, which is reflected, as per the assertions of the petitioner, on the killing of Ranjit Singh and Ram Chander Chhatarpati of which he is a witness. There can be no doubt that with the conviction of the Dera Head in the rape case of *Sadhvis* in the *Dera*, which resulted in wide spread violence in the States of Punjab and Haryana, which was with great effort and difficulty controlled followed by confining the Dera Head in jail for 20 years as per the sentence, a sigh of relief would have felt by the petitioner.

It would not be out of way to mention here that the Dera Head was convicted on 25.08.2017 and the application under Section 311 Cr. P.C. has been preferred by the petitioner on 14.09.2017. There has not been any delay on the part of the petitioner in approaching the Court, the moment the threat, according to him, ceased. In the given facts and circumstances of the present case and in the light of the pleadings, it cannot be said that the petitioner was not influenced by the prevailing circumstances.

Reference to the judgment of this Court in the case of Khushwinder Singh (supra) can be made at this stage in which case also, earlier the prosecution witnesses turned hostile in Court and did not support the prosecution, however, subsequently, after the death of the accused, who had threatened them, an application was preferred by them praying for re-examination on the plea that they were under threat from one of the accused and, therefore, did not speak the truth. However, with the death of the accused, they have gathered courage to speak out the truth. The Court


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proceeded to accept the said plea rejecting the stand of the accused that allowing of an application under Section 311 of the Code would amount to filling up the lacunae in the prosecution case making out a totally new case against the accused. The Court, relying upon the case of Zahira Habibulla H. Sheikh (supra), had observed that the object of justice delivery system is to mete out justice and to convict the guilty and protect the innocent. The trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent and punish the guilty. The Court had further observed that the witnesses are the eyes and ears of justice and if the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truth in the Court or due to negligence or under threat or ignorance or some corrupt collusion. The said judgment, on principles, would be applicable to the facts of the present case as in the present case as well, the petitioner had no opportunity to speak the truth because of the circumstances and the position, in which he was put being beyond his control to speak the truth.

The assertion of the counsel for the respondent-accused that prejudice would be caused to the accused as they have disclosed the defence, suffice it to say that they would have ample opportunities to cross-examine the recalled witness. It would not be out of way to mention here that the earlier statements made by the petitioner would still be available on the record and it would be open to the trial Court to decide the case on the basis of evidence already on record as well as the additional evidence,


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which would be recorded on re-examination of the petitioner.

The trial Court, while passing the impugned orders, appears to have been over influenced by the facts that the trial is old and by allowing the present application, it would further delay the trial. There can be no doubt that the expeditious trial is the right of each person who is aggrieved or is an accused and who is interested in the case but merely because of the delay, justice should not be made the casualty. The primary aim and object of the Court is to do justice which is to punish the guilty and to protect the innocent, which ultimately depends upon the evidence.

On considering the facts and circumstances of the present case, this Court is of the opinion that the evidence of the petitioner is essential for the just decision of the case and, therefore, the application deserves to be allowed for the reasons mentioned therein as the truth alone should prevail.

In view of the above, these revisions petitions are allowed. Orders dated 25.09.2017 and 06.01.2018 passed by the Special Judge (CBI) Haryana at Panchkula, are hereby set aside. Applications filed by the petitioner-Khatta Singh under Section 311 Cr. P.C. are allowed.

**CRM-33766-2017**

Applicant-respondent No. 6 may avail of his remedy before appropriate Forum at the appropriate stage. No orders are required to be passed in this application as of now.

**CRM-31645-2017**

In view of the disposal of the main petitions, this application stands disposed of.

**April 23, 2018** **(AUGUSTINE GEORGE MASIH)**
*pj* **JUDGE**

**Whether speaking/reasoned: Yes/No**
**Whether Reportable: Yes/No**


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