

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
2015.01.22 17:13
I attest to the accuracy and
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CRM No. M-1555 of 2015 (O/M)

Date of decision : 16.1.2015

Shiv Kumar Bajaj

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikram Chaudhari, Senior Advocate, with,
Mr. Harshit Sethi, Advocate, for the petitioner.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH, J. (ORAL)

In this petition filed under Section 482 Cr.P.C., the prayer has been made for quashing the order dated 17.12.2014 (Annexure-P-10), passed by the learned Judicial Magistrate 1st Class, Batala , vide which application under Section 311 Cr.P.C., filed by the complainant/petitioner has been dismissed. Further prayer has been made for setting aside the order dated 14.11.2014 (Annexure-P-12), passed by the trial Court, vide which the evidence of the prosecution has been closed by orders.

I have heard learned senior counsel for the petitioner and have also carefully gone through the file.

Learned senior counsel for the petitioner has argued that in this case, a sale deed dated 5.3.2001, registered on 15.3.2001, and another sale deed dated 16.3.2001, registered on 12.4.2001, were forged and fabricated by way of impersonation. The complainant/petitioner moved a complaint dated 21.7.2003 (Annexure-P-1) before the Inspector General, Border Range, Amritsar, in which the inquiry was marked to the Deputy Superintendent of Police, Qadian, and on the basis of said inquiry, the FIR was registered. The complainant/petitioner had moved another application before the Deputy Commissioner, Gurdaspur, regarding the said forgery, which was marked to the then Assistant Commissioner (Grievance), Gurdaspur, who had recorded the statements of the present accused, in which one of the accused Gurcharan Singh, Numbardar, had deposed that sale deed dated 5.9.2003 is forged and fabricated document and is a result of impersonation. The statements of Gurpreet Singh, Amrik Singh and Kashmir Singh alongwith other accused were also recorded and the report dated 2.12.2003 (Annexure-P-4) in this regard was submitted to the Deputy Commissioner, Gurdaspur. The Deputy Commissioner, Gurdaspur, had recommended the taking of action against the accused.

It is stated that pending the trial of this case due to

oversight, the said inquiry reports alongwith statements and letter written by the Deputy Commissioner, Gurdaspur, could not be proved on record during the course of evidence by prosecution. Now, the complainant wants to summon the said file from the concerned office containing reports and letters etc. of Shri Gurkirpal Singh, the then Assistant Commissioner (Grievances), who had conducted the inquiry.

After obtaining the reply of the accused, who opposed the prayer and after hearing the parties, the said application was dismissed by observing that a perusal of final report under Section 173 Cr.P.C. reveals that the complainant had moved an application before the I.G., Border Range, Amritsar. The inquiry was conducted by the Station House Officer, Sri Hargobindpur and the Deputy Superintendent of Police, Qadian and after the inquiry, the present case was registered. The complainant, during his examination-in-chief before the Court, never brought the facts mentioned in the application to the knowledge of the Court, nor these were brought to the knowledge of the Investigating Officer. It was further observed that now the prosecution evidence has been concluded. The statements of accused under Section 313 Cr.P.C. have already been recorded and the case is at the stage of defence evidence. Even in the list of witnesses, the officials of the office of Deputy Commissioner to prove the said fact have not been cited. It was further observed that the prosecution cannot be now allowed to fill

in lacuna in its case.

I have heard learned senior counsel for the petitioner and have also carefully gone through the file.

The copy of report under Section 173 Cr.P.C. (Annexure-P-7) shows that the case was registered on the basis of a complaint made to I.G. Border Range, Amritsar and after conducting an inquiry into the matter by the police. The supplementary challan under Section 173 Cr.P.C. shows that the supplementary report was also presented before the Court, in which the mention was made about the conducting of inquiry by a Public Grievance Officer. The said supplementary report was filed somewhere in December, 2008.

Learned senior counsel for the petitioner has relied upon the authority of the Hon'ble Supreme Court in Rajaram Prasad Yadav Versus State of Bihar and another, 2013 (3) RCR (Criminal) 726 and has stated that if the Court arrives at the conclusion that the additional evidence is necessary and that there will be a failure of justice without such evidence being considered, the same has to be allowed even if there is any delay in filing the application.

After considering the facts and circumstances of the case, I am of the view that the additional evidence sought to be produced at this stage is not at all necessary to meet the ends of justice. In this case, the allegations are of impersonation and forgery at the time of execution of two sale deeds. It appears that the complainant made the same complaint to the IG Border Range,

Amritsar, as well as to the Deputy Commissioner, Gurdaspur. Two inquiries were conducted, one by the police and the other by the Assistant Commissioner (Grievances). As a result of the inquiry conducted by the police, the present case was registered. I am of the view that the inquiry was just to satisfy the authorities that prima facie, a case is made out. During the trial, impersonation and forgery has to be proved by an independent witness. The inquiry report cannot be made the basis for conviction. Therefore, the inquiry report, may that be of the police or of the civil authority, cannot be made the basis for conviction of the accused. Moreover, it is evident that the present case was instituted in the year 2006 and is pending trial for the last little less than nine years. Now, the prosecution evidence has been closed by orders, the statements of the accused under Section 313 Cr.P.C. have been recorded and the case is at defence stage. If the prayer of petitioner is accepted and he is allowed to produce the inquiry report and prove the statements of the witnesses, it will not meet the ends of justice. Firstly, the statement of witnesses, if allowed to be proved, have to be put to the witnesses if he has been examined by the prosecution. Further, such evidence has to be put to the accused under Section 313 Cr.P.C. Even in this case, the inquiry conducted by the police is not being proved. As stated above, the offence of forgery and impersonation has to be proved by an independent evidence during trial. Therefore, the production of the inquiry file of the office of the Deputy

Commissioner and proving the statements of the witnesses will be a futile exercise and will only delay the further disposal of the case. Therefore, I am of the view that the application under Section 311 Cr.P.C. was rightly dismissed by the trial Court. There is no ground to interfere with the order dated 17.12.2014 (Annexure-P-10), passed by learned Judicial Magistrate 1st Class, Batala, and the order dated 14.11.2014 (Annexure-P-12), passed by the learned Judicial Magistrate 1st Class, Batala, closing the prosecution evidence by orders.

Dismissed.

(KULDIP SINGH)
JUDGE

16.1.2015
sjks