

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRM-M-16501-2015 (O&M)

Date of decision:9.7.2015

Gurbachan Singh and another

...Petitioners

Versus

The State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.G.S.Bal, Sr. Advocate with
Mr.A.D.S.Bal, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

CRM-20379-2015

Applicants seek to place on record copy of FIR No.258 dated 16.8.2005 as Annexure P-12, as orally prayed by the learned senior counsel for the applicants-petitioners.

In view of the above, the instant application is allowed. FIR No.258 dated 16.8.2005 registered under Sections 420, 467, 468 and 471 IPC at Police Station City Batala, is ordered to be placed on record as Annexure P-12. Office is directed to put the document at appropriate place and also to mark the page number.

CRM stands disposed of.

Main case

The present petition, under Section 482 of the Code of Criminal Procedure ('Cr.P.C.' for short), is directed against the order dated

11.12.2014 passed by the learned Judicial Magistrate 1st Class, Batala, whereby application moved by the prosecution was allowed, permitting it to lead secondary evidence, however, subject to proof of loss and existence and all just exceptions, envisaged under Section 65 of the Indian Evidence Act.

Learned senior counsel for the petitioners submits that the learned trial Court has misdirected itself, while passing the impugned order. He places heavy reliance on the order dated 27.2.2013 passed by the Civil Judge (Junior Division), Batala, whereby a similar application in a civil suit was allowed by the learned civil court but the matter has not been attained finality so far, in view of the order dated 20.5.2013 passed by this Court (Annexure P-8), staying the operation of the order dated 27.2.2013 passed by the Civil Judge (Junior Division), Batala. He further submits that the trial was going on for the last 8 years and it was not warranted at the hands of the learned trial Court to permit the prosecution to lead secondary evidence at this belated stage of the trial. He prays for setting aside the impugned order, by allowing the present petition.

Having heard the learned senior counsel for the petitioners, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

A bare reading of the impugned order passed by the learned

Judicial Magistrate 1st Class, would show that the learned trial Court has considered each and every aspect of the matter in detail before arriving at a judicious conclusion. Existence and loss of the documents which are sought to be produced by the prosecution by way of secondary evidence have been duly proved. However, in spite of the proof of existence and loss of documents, the learned trial Court made it clear in operative part of the impugned order that prosecution shall be allowed to produce the documents mentioned in the application subject to proof of loss and existence and all just exceptions envisaged under Section 65 of the Indian Evidence Act. This was the only requirement of law which should have been ensured by the learned trial Court and that is what has been done by it. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Coming to the next argument raised by the learned senior counsel for the petitioners about the passing of the order at a belated stage, it is suffice to note here that the learned trial Court was conscious of this fact and it has been specifically observed in para 8 of the impugned order that enough delay was caused by the petitioners, while moving various applications seeking adjournments. This being a matter of record, delay cannot be attributed to the prosecution alone. Further, the learned trial Court has found that documents sought to be produced by way of secondary evidence were very much essential for just decision of the case. In this view of the matter, the learned trial Court has rightly exercised its jurisdiction, while passing the impugned order and the same deserves to be upheld for

this reason also.

It is the settled proposition of law that every court of law must make an endeavour to ensure complete and substantial justice between the parties. In the present case, once the prosecution has proved on record the existence and loss of the documents sought to be produced by way of secondary evidence, the learned trial Court was well within its jurisdiction while allowing the prosecution to prove the documents mentioned in their application by way of secondary evidence, however, subject to proof of their loss and also subject to all just exceptions envisaged under Section 65 of the Indian Evidence Act. Under these circumstances, it is unhesitatingly held that the impugned order has not been found to be suffering from any patent illegality and the same deserves to be upheld for this reason as well.

During the course of hearing, learned senior counsel for the petitioners could not point out any jurisdictional error or patent illegality apparent on the record of the case in the impugned order passed by the learned trial Court so as to warrant interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. It is pertinent to note here that although powers of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the discretionary powers are to be exercised sparingly and with circumspection. Since the impugned order has not been found to be suffering from any perversity or illegality, no interference at the hands of this Court is called for.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the

considered view that present petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant petition stands dismissed, however, with no order as to costs.

9.7.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE