

CRM NO. M-1765 of 2015
DECIDED ON : May 26, 2015

Rajesh Verma

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Sanjay Verma, Advocate
for the petitioner.

Mr. Vikas Chopra, DAG, Haryana.

Mr. Shiv Kumar, Advocate
for respondents No.2 to 4.**JASPAL SINGH, J. (ORAL)**

Instant petition has been preferred under Section 482 Cr.P.C for quashing/setting aside the impugned order dated May 24, 2014 passed by learned Judicial Magistrate Ist Class, Faridabad (Annexure P-1) vide which evidence of the prosecution was ordered to be closed as well as impugned order dated July 10, 2014 learned Judicial Magistrate Ist Class, Faridabad(Annexure P-2) vide which an application under Section 311 Cr.P.C. filed by complainant/petitioner was illegally and wrongly dismissed.

2. While issuing notice of motion on January 19, 2015 the following order was passed:

“Application under Section 311 Cr.P.C., for calling Abbas Khan a material prosecution witness and SI Subhas, the Investigating Officer has been dismissed vide impugned order. When questioned as to why the petitioner could not have filed, a revision petition against the order finally dismissing an

application under Section 311 Cr.P.C., counsel for the petitioner relies upon Sethuraman Vs.Rajamanickam, 2009 Cri. L.J. 2247, wherein Hon'ble the Apex Court has made an observation that the orders on application under Section 311 Cr.P.C., for recalling a witness were orders of interlocutory nature and revision under Section 397 (2) Cr.P.C. was not maintainable.

I have heard the counsel for the petitioner. It appears that the dismissal of application under Section 311 Cr.P.C., declining to summon the Investigating Officer and material eye witness would be an abuse of process of Court and the testimony of said witnesses is necessary for the adjudication of the controversy fairly.

Notice of motion to the respondents for 3.3.2015.

Meanwhile, the trial Court shall not pass final order."

3. Undisputably, Investigating Officer SI Subhash as well as official witness namely Abbas Khan remain to be examined by prosecution regarding which an application under Section 311 Cr.P.C. was moved by the petitioner but that application was dismissed vide impugned order dated July 10, 2014 passed by learned Judicial Magistrate 1st Class, Faridabad (Annexure P-2). Both the witnesses can be termed as material witnesses to impart justice in between the parties and for the advancement of justice to the parties. Merely, because examination of Investigating Officer is not going to prejudice the case of the petitioner does not *ipso facto* mean that Investigating Officer is not necessary to be examined for the proper and effective adjudication of the matter in controversy. Rather declining of their examination as a witness would certainly cause dent in the case of prosecution.

4. Considering the fact that examination of Investigating Officer SI Subhash as well as official witness namely Abbas Khan is essential for proper adjudication of the matter in controversy; both the impugned orders dated May 24, 2014 (Annexure P-1) and dated July 10, 2014 (Annexure P-2) respectively, passed by learned Judicial Magistrate Ist Class, Faridabad are set aside by way of acceptance of instant petition and learned trial Court is directed to examine the Investigating Officer as well as official witness Abbas Khan and then decide the matter in controversy in accordance with law.

May 26, 2015
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(JASPAL SINGH)
JUDGE