

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.M-26122 of 2014

.....

Date of decision:16.1.2015

Harmanjit Singh

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh.

.....

Present: Mr. P.S. Ahluwalia, Advocate for the complainant-petitioner.

Mr. Varun Sharma, Assistant Advocate General, Punjab
for the respondent-State.

Mr. Sanjay Gupta, Advocate for the private respondents.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for setting aside of impugned order dated 5.7.2014 (Annexure-P.5) passed by learned Sessions Judge, Hoshiarpur, whereby application filed by the prosecution under Section 311 Cr.P.C. has been dismissed.

Notice of motion has been issued in this case.

Mr. Varun Sharma, learned Assistant Advocate General, Punjab has put in appearance on behalf of the respondent-State and Mr. Sanjay Gupta, learned Advocate has appeared on behalf of private respondents and contested this petition.

I have heard learned counsel for the petitioner and learned

[2]

Assistant Advocate General, Punjab appearing for the respondent-State as well as Mr. Sanjay Gupta, learned counsel for the private respondents and have gone through the record.

An application has been filed by the prosecution under Section 311 Cr.P.C. for summoning Deputy Superintendent of Jail, Hoshiapur, to prove forwarding letter No.4508 dated 26.12.2007 sent to the Court of learned Additional Sessions Judge, Hoshiarpur. It is claimed that Balwinder Singh alias Datta was co-accused along with Ranbir Singh, Sandip Singh and others and he had already died. During the pendency of the case, Balwinder Singh sent self hand written confession duly attested by the Deputy Superintendent of District Jail, Hoshiapur, which was forwarded by the Deputy Superintendent of the Jail. It was stated that Balwinder Singh moved an application through counsel on 2.2.2008 for getting pardon. That application for treating Balwinder Singh as approver was declined, but on appeal being preferred in the High Court, the matter was remitted back to the trial Court for fresh decision. Through confessional statement, Balwinder Singh inculpated himself as well as the other co-accused. Story of admission of guilt by Balwinder Singh gets corroboration from testimonies of PW-9 Satpal Singh, PW-12 Ravinder Singh, PW-17 Satnam Singh, PW-18 Harmanjit Singh, PW-19 Saudagar Singh, PW-23 Kuldeep Singh and PW-24 Harjinder Singh.

The learned Sessions Judge, Hoshiarpur vide order dated 5.7.2014, dismissed this application.

From the record, I find that no illegality has been committed

[3]

by the learned Sessions Judge, Hoshiarpur, while dismissing the application.

First of all this so-called confession made by accused Balwinder Singh is not binding upon the other co-accused. As argued by learned counsel for the petitioner himself, it could be seen for forming an opinion in view of the other evidence on record as corroboration. Balwinder Singh accused had already died. He cannot be produced even in defence to depose whether this confession is voluntary confession or under any threat etc. This confession is stated to be attested by Deputy Superintendent of Jail, Hoshiapur, who is a Police official. He cannot prove the same and the confession, if any, made by any person before the Police official, is also inadmissible under Section 25 of the Evidence Act. This is not the case of the prosecution that this confession is made before Deputy Superintendent of Jail. Secondly, as Balwinder Singh has already died, at the most this confession can be treated as his statement. This statement cannot be held as a dying declaration because the statement which discloses the cause of death of a person or circumstances leading to death can be treated as dying declaration. This statement of Balwinder Singh also cannot be proved nor it is admissible in evidence as a statement given by a dead person in other judicial proceedings between the same parties under Section 33 of the Evidence Act etc. If this evidence is allowed to be produced, then a prejudice will be caused to the respondents, who are not able to cross-examine Balwinder Singh or can produce him in evidence due to his death. Otherwise also, under Section

[4]

311 Cr.P.C, it is to be proved by the prosecution that this evidence is necessary and essential for the just decision of the case which is not the case of the prosecution.

Therefore, from the above, I do not find any merit in this petition and the same is dismissed.

January 16, 2015.

(Inderjit Singh)
Judge

hsp