

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

CRM-M-2751 of 2015
Date of Decision: 18.05.2015

Savitapetitioner

Versus

Ram Singh and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Varun Gupta, Advocate
for the petitioner.

Ms. Mahima, AAG, Haryana.

Mr. Bipin Ghai, Sr. Advocate with
Mr. Vishavjit K. Virk, Advocate
for respondents No.1 and 2.

SNEH PRASHAR, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') for quashing of the order dated 26.03.2013 (Annexure P-3) passed by Learned Chief Judicial Magistrate, Narnaul in case First Information Report No.12 dated 11.01.2007 under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code (for short 'the Code') registered at Police Station City Narnaul and order dated 04.12.2014 (Annexure P-4) passed by learned Additional Sessions Judge, Narnaul, whereby the application of the petitioner under Section 311 Cr.P.C has been dismissed.

2. An application for recalling PW-4 Manager, Central Co-operative Society Bank, Ateli Mandi alongwith cheque No.004536, the payment of which was made by PW-1 Attar Singh on the basis of resolution,

was filed by the prosecution in the case, particulars of which have been mentioned above. Learned counsel for the petitioner argued that PW1-Attar Singh, Retired Development Officer, Central Co-operative Society Bank, Mandi Ateli had produced photocopy of the cheque the payment of which was made by him on the basis of resolution. However, the original cheque and the resolution sent to the Bank were not produced by him and he made the statement only on the basis of a photostat copy. Learned counsel contended that the cheque and the resolution were most material documents for complete and proper decision of the case and therefore PW-4, Manager Central Co-operative Society Bank, Ateli Mandi was required to be resummoned for proving the said documents. To support his arguments learned counsel for the petitioner relied upon the judgment of Supreme Court titled as Rajendera Prasad Vs. Narcotic Cell (1999) 6 SCC 110.

3. The application was opposed by counsel for the respondents No.1 and 2. He submitted that the charge in the instant case was framed on 11.07.2011 and thereafter 9 effective opportunities were accorded to the prosecution to produce its evidence but it failed to conclude the same. Ultimately vide order dated 26.11.2012 the evidence of the prosecution was closed by learned trial Court and statements of the accused under Section 313 Cr.P.C were recorded. In their defence one witness was examined by the accused after the prosecution challenged the order dated 26.11.2012 by way of a revision petition which was allowed by learned Additional Sessions Judge, Narnaul and the prosecution was allowed to examine four witnesses named by it in the revision petition and again the statement of the accused under Section 313 Cr.P.C was recorded and it is thereafter that the instant application seeking to examine Manager, Central Co-operative Societies

Bank, Mandi Ateli was filed by the prosecution.

Learned counsel also contended that on 14.11.2011, during the statement of PW-1 Attar Singh, the accused had taken an objection against the photostat copy of the cheque tendered in evidence but at no stage before filing the present application the prosecution ever initiated any step to get the original cheque produced.

4. Having heard learned counsel for the parties there appears to be no merit in the prayer of the petitioner. As submitted by learned counsel for the petitioner during arguments the allegation of the petitioner was that her signatures were forged on the resolution which was filed in the Bank alongwith the cheque. Meaning thereby that release of payment of the cheque on the basis of resolution was not a matter in dispute. The onus on the prosecution was to prove that the signatures on the resolution were forged for which the petitioner has already been examined and the cheque and certified copy of the resolution, as stated in the application filed by the prosecution under Section 311 Cr.P.C., have already been tendered in evidence.

5. Be that as it may, in Rajendera Prasad's case (supra) Hon'ble Supreme Court laid down that lacuna in the prosecution must be understood as the inherent weakness or latent wedge in the matrix of prosecution case. By way of application under Section 311 Cr.P.C an inherent weakness/irreparable lacunae in the matrix of the prosecution case cannot be filled up. If at all the cheque and the resolution were the main/material documents of the prosecution, their existence was in its knowledge from the very beginning. The petitioner who claims to be an effected person also had knowledge about the same. However, despite objection taken by the accused

at the time of examination of PW-1 and having availed as many as 9 effective opportunities thereafter no effort was made by the prosecution to get the original documents produced.

6. Apart from the above, it is reflected in the order of learned trial Court that after the evidence of the prosecution was closed on 26.11.2012 by an order of Court, statement of the accused under Section 313 Cr.P.C. had been recorded. The prosecution filed a revision petition impugning the order dated 26.11.2012 and named 4 witnesses in its revision petition who were left to be examined. The revision petition was allowed and the witnesses named were examined. At that stage, neither a prayer was made to recall Manager of the Central Co-operative Society Bank, Mandi Ateli nor a reference was made to the alleged documents.

7. The case pertains to the year 2007. Apparently, it was being prosecuted by the petitioner in a very casual and careless manner. She cannot by way of instant petition be allowed to fill in the lacunae in the case. Finding no ground for intervention in the order of the learned trial Court/learned Additional Sessions Judge, the petition is hereby dismissed.

May 18, 2015
rashmi

(SNEH PRASHAR)
JUDGE