

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

**Criminal Misc. No. M-38938 of 2015 (O&M)
Date of decision: 19.11.2015**

Surinder Kumar Nagpal

..Petitioner

Versus

U.T. Chandigarh and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Rajiv Kataria, Advocate
for the petitioner.

Daya Chaudhary, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. for setting aside order dated 24.09.2015 (Annexure P-15) passed by Judicial Magistrate Ist Class, Chandigarh, whereby, an application moved by the petitioner under Section 311 Cr.P.C. has been dismissed.

Learned counsel for the petitioner submits that the original agreement to sell was executed by Sanjiv Nagpal in favour of Gauri and Rajiv Chanana but the terms of the agreement were changed in forged and fabricated receipt annexed as Annexure P-4. For proving, whether it was there in the agreement or not, the statement of Sanjiv Nagpal and Gauri is necessary. Learned counsel further submits that

the said change has been made with or without consent of Gauri and it was there in the knowledge of Gauri or not, can be proved by recording the statement of Sanjiv Nagpal. Learned counsel also submits that only Sanjiv Nagpal can state whether the change was made with the consent of Gauri or not and that can be proved from the receipt, which was issued after full and final payment.

Notice of motion.

Notice on behalf of respondents No.2 and 3 has been accepted by Mr. Ajaivir Singh, Advocate, who is present in the Court.

Learned counsel appearing for respondents No.2 and 3 submits that earlier petition filed by the petitioner was dismissed wherein same prayer was made. The present petition has been filed at the fag end of the trial as the case is fixed for arguments and great prejudice would be caused to the respondents as this fact was in the knowledge of the petitioner earlier also but intentionally no such application was moved. An averment was also made in the earlier petition as well as in the application moved under Section 311 Cr.P.C.

Heard arguments of learned counsel for the petitioner as well as learned counsel for respondents No.2 and 3 and have also perused the order passed in the earlier petition filed by the petitioner as well as the application, which was dismissed by the lower Court.

On perusal of application as well as the petition filed by the petitioner before this Court, it is apparent that it was not mentioned therein that examination of Sanjiv Nagpal and Gauri was necessary

for just decision of the controversy in dispute. Although the trial is at fag end as the case is fixed for arguments and the same is lingering on for a long time but it cannot be said that the examination of said witnesses is not necessary for just decision of the case.

As per provisions of Section 311 Cr.P.C., the stage is not relevant and in case, statement of any witness, which is necessary for just decision of the controversy in dispute can be recorded at any stage and it can be allowed even at the time of arguments of the case.

Section 311 Cr.P.C. is reproduced as under: -

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

It is apparent from perusal of provisions of Section 311 Cr.P.C. that the application moved under Section 311 Cr.P.C. can be allowed at any stage. However, keeping in view the stage of the trial and that the delay has occurred because the petitioner was granted various opportunities and the case is lingering on for a long period, the present petition is allowed subject to payment of costs of

₹25,000/- to be paid to respondents No.2 and 3. The petitioner is allowed one more opportunity to examine the aforesaid persons at his own expenses

However, it is made clear that in case, the petitioner fails to record the statement of said witnesses within a period of one month from the date of receipt of certified copy of this order, then he is not entitled for examination of aforesaid witnesses.

19.11.2015
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(DAYA CHAUDHARY)
JUDGE