

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

CRM-M-43167-2014 (O&M)

Date of Decision: April 21, 2015.

Mukesh

....Petitioner.

VERSUS

State of Haryana

....Respondent.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Bijender Dhankhar, Advocate for the petitioner.

SNEH PRASHAR, J.

A petition under Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") for setting aside the order dated 18.11.2014 passed by learned Judicial Magistrate Ist Class, Sonapat was filed by petitioner Mukesh in case First Information Report No.225 dated 24.04.2009 under Sections 332, 353, 186 and 506 of the Indian Penal Code (in short, "I.P.C.") registered at Police Station City, Sonapat.

2. The case, particulars of which have been mentioned above, was registered on the complaint of Ashok Kumar Jain, an Executive Engineer,

Division-II, Public Health. His allegation was that on 24.04.2009, while he was sitting in his office alongwith other officials, Mukesh Kumar, Contractor (petitioner) came and asking him to immediately clear the bills of Kanwar Enterprises, hurled abuses on him, also assaulted him with fist blows and criminally intimidated him of being killed.

The petitioner was arrested, challaned and charge sheeted. During the trial, the complainant filed an application under Section 311 Cr.P.C., seeking permission to produce letter No.3414 dated 27.03.2009 written by the Superintending Engineer of the Department to the petitioner prior to the occurrence in question, as additional evidence.

3. The application was resisted by the petitioner by filing a written reply. Considering the submissions made on behalf of the parties, learned trial Court finding that the documents are necessary to be proved on record for just decision of the case, allowed the application in exercise of discretionary powers.

4. Feeling aggrieved by the impugned order dated 18.11.2014 passed by learned Judicial Magistrate Ist Class, Sonapat, petitioner Mukesh has preferred the instant petition.

5. The submissions made by Mr. Bijender Dhankhar, learned counsel representing the petitioner have been heard.

6. Learned counsel for the petitioner argued that there was no reference of the letters sought to be produced as additional evidence by the complainant in the First Information Report. Also when the complainant in the witness box, he did not refer to any such letter. It was at a very belated

stage when the case was fixed for defence evidence that the application for producing the letters by way of additional evidence was filed by the complainant. More so, the letters had no relevancy with the occurrence in question and were also not material or necessary for proper adjudication of the case. It was only to fill in the lacuna that the complainant had filed the application.

7. There appears to be no merit in the arguments of learned counsel for the petitioner. Considering the facts and circumstances of the case, the findings of learned trial court were as under:-

*“In the case law relied upon by the learned counsel for accused titled as **Narender Singh vs. State of Punjab & others** (Supra) application under Section 311 Cr.P.C. was dismissed on the ground that prosecution cannot be allowed to fill up the lacuna of the case. However, in the present case, it is not so. The applicant/complainant wants to prove on record certain documents which have already been confronted by the prosecution at the time of defence evidence. Accordingly, it cannot be said that prosecution want to bring something new on record to fill up the lacuna of the case. This court is of the view that these documents are necessary to be proved on record for just decision of the case and therefore in exercise of discretionary powers to this court, present application stands allowed.”*

8. Learned counsel for the petitioner could demonstrate no illegality or perversity in the findings of learned trial Court arising out of misreading or misappreciation of the evidence available on file. It is apparent that the letters which the complainant intended to tender in evidence had already been put to the witnesses examined in defence. It is also the observation of learned trial court that the documents are necessary for just and proper decision of the case. Under Section 311

Cr.P.C., the Court has unrestricted power of summoning a witness/allowing evidence to be produced which the Court considers necessary for just and proper adjudication of the case and for doing justice between the parties. The Court can adopt all lawful means to arrive at the truth. Even acting on his own initiative, it can summon any witness if his evidence is necessary for just decision of the case.

Thus, in the aforesaid facts and circumstances and finding no ground for intervention in the discretionary power exercised by the learned trial Court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

April 21, 2015
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