

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-7127 of 2014

Date of Decision:12.1.2015

Joginder Singh

---Petitioner

versus

Natha Singh and others

---Respondentss

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Surinder Garg, Advocate
for the petitioner**

**Mr. B.B.S.Sobti, Advocate
for respondents No. 1 to 5**

**Mr. Naresh Jain, Advocate
for respondents No. 6 to 9**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

The present petition under Section 482 of the Code of Criminal Procedure (in short “Cr.P.C.”) lays challenge to order dated 19.12.2013 passed by the Sub Divisonal Judicial Magistrate, Gidderbaha in complaint titled “*Joginder Singh vs. Natha Singh and others*” whereby the application filed by the petitioner under Section 311 Cr.P.C. has been dismissed.

Counsel for the petitioner contends that Joginder Singh son of Dal Singh filed the criminal complaint for offence punishable under

Sections 420, 467, 468, 471, 120-B of the Indian Penal Code (in short “IPC”) on the allegations that his father Dal Singh died in the year 1971 and the sale deed dated 29.1.1986 executed on behalf of Dal Singh in respect of his share in the property is the result of fraud and forgery.

After conducting preliminary enquiry, all the accused were ordered to be summoned to face trial for commission of aforesaid offences vide order dated 12.6.2010. Natha Singh and others (respondents No. 1 to 5 herein) challenged order dated 12.6.2010 by way of revision before the Court of Sessions which was allowed vide order dated 18.9.2012 with a direction to the trial court for passing a fresh order without being prejudiced by its previous order.

The petitioner filed an application under Section 311 Cr.P.C. for examination of Chander Mohan by way of additional evidence which was dismissed by the trial court.

It is vehemently argued that Chander Mohan appeared on behalf of the vendees at the time of execution and registration of the sale deed dated 29.1.1986 and, therefore, he is the best person to know the person who represented himself to be Dal Singh during those proceedings and affixed his thumb impressions on the sale deed as an executant both at the time of preparation of sale deed and its registration.

Counsel for the contesting respondents would submit that during hearing of the revision petition, no such plea was raised by the petitioner that he be permitted to adduce additional evidence. Chander Mohan has neither been cited as a witness by the complainant nor sought to examine him during preliminary enquiry which remained pending before the

trial court for more than three years. It is further argued that the petitioner cannot be allowed to collect evidence through process of the court, therefore, the impugned order is liable to be affirmed.

I have heard counsel for the parties and perused the records.

Before advertng to the submissions made by counsel for the parties, it is necessary to point out that the respondents are arrayed as accused in the criminal complaint filed by Joginder Singh. The summoning order passed by the trial court has been set aside in revision with a direction to the trial Magistrate to pass the order afresh. It appears that taking advantage of a mistake committed by the revisional court directing the parties to put in appearance before the trial court, the respondents were allowed a hearing at the time of disposal of application under Section 311 Cr.P.C. when otherwise in view of settled position of law, the accused have no right to be heard at pre process stage. In this view of the matter, I am of the considered opinion that the respondents have no right to be heard in the matter till they are summoned to face trial.

Now coming to the case in hand, it is a categoric plea of the petitioner that his father Dal Singh died in the year 1971 and, therefore, Dal Singh could not be present to execute the sale deed in the year 1986. Indisputably, the petitioner was not present at the time of execution of the sale deed. One Chander Mohan appeared on behalf of the vendees at the time of execution and registration of the sale deed in question.

Section 311 Cr.P.C. empowers the court to summon material witness or examine person present. The court is competent to summon any person as a witness or examine any person in attendance or recall and re-

examine any person already examined at any stage of any inquiry, trial or other proceedings whose evidence appears to the court to be essential for just decision of the case. Perusal of the impugned order would reveal that the trial Magistrate has not recorded any finding that examination of Chander Mohan is not essential for just decision of the case. On the contrary, the trial Magistrate has dismissed the application that the complainant was not entitled to seek indulgence of the court as he did not examine this witness earlier and wants to fill up lacuna in the case. The trial court failed to appreciate the difference between lacuna and lapse while dismissing the application. Keeping in view the facts and in the circumstances of the present case, I find merit in the contention of the petitioner that examination of Chander Mohan is essential for just decision of the case and, therefore, the application filed by the petitioner deserves to be allowed.

In view of what has been discussed hereinabove, the petition is allowed, the impugned order is set aside and the application filed by the petitioner for examination of Chander Mohan as an additional witness is allowed. However, keeping in view the fact that the proceedings are pending before the Court for the past about 07 years and are at initial stage, the trial court would put its best efforts to conclude the preliminary enquiry expeditiously.

(REKHA MITTAL)
JUDGE

12.1.2015
PARAMJIT