

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

**Crl. Misc. No.M-8704 of 2015
Date of decision :27.04.2015**

Rajesh Kumar

.....Petitioners

versus

State of Haryana

...Respondents

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. S.S. Pannu, DAG, Haryana.

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ANITA CHAUDHRY, J.

This is a petition under Section 482 Cr.P.C. For quashing the order dated 07.01.2015, passed by the Judicial Magistrate 1st Class, Karnal (Annexure P-1) and order dated 26.02.2015, passed by the Additional Sessions Judge, Karnal (Annexure P-2).

The factual matrix needs a reference to understand the circumstances which led the accused to file the application under Section 311 Cr.P.C. (Annexure P-4).

The petitioner is facing trial under Section 420 IPC and Section 7 of the Essential Commodities Act on the allegations that he had obtained two ration cards one in village Chor Karsa and the other in Vasant Vihar, Karnal and was drawing ration. The disputed ration card was used to obtain a bank loan. The prosecution had led its evidence and the case was fixed for defence evidence when the accused moved an application under Section 311 Cr.P.C. The concluding paragraph of the application reads as under:-

"It is therefore, prayed that in view of the facts mentioned above the thumb impression of applicant-accused may please be compared/attested with the Ex.PW-2/G from D-1 available in the case file, before the Hon'ble Court, in the interest of justice."

The State filed its reply and after hearing both the sides, the trial Magistrate vide order dated 07.01.2015, dismissed the application holding that the Court could not help the accused in collecting evidence and it was for him to produce his evidence. It clarified that the Court could summon his witnesses but he could not seek the assistance of the Courts, to take his thumb impressions and then send it to a private Handwriting Expert or the FSL, for comparison.

The revision filed by the petitioner also failed. Aggrieved by both the orders, this petition has been filed under Section 482 Cr.P.C. for invoking the inherent powers of the Court.

I have heard the submissions of both the sides.

The counsel for the petitioner had urged that the second ration card does not bear his thumb impression nor it was used to obtain the loan and it was necessary that his thumb impression should be got compared by a private Fingerprint Expert or through the FSL and it would be helpful for the decision of the case.

The submission on the other hand was that the Court could not collect evidence and it is the duty of the accused to lead his evidence. It was urged that the prosecution had earlier moved an application in 2008 for permission to take the thumb impressions of the accused but he (accused) had refused and had made a statement and now was asking the Court to take his thumb impressions and appoint a Fingerprint Expert to compare his thumb impressions and he was employing delaying tactics.

Section 311 Cr.P.C. reads as under:-

Section 311 in The Code Of Criminal Procedure, 1973

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.

A perusal of the provisions above make it crystal clear that the Court has been empowered to summon any person as a witness at any stage of the inquiry, trial or other proceedings if the Court is satisfied that his evidence is essential to the just decision of the case. The petitioner here is not seeking permission to summon any witness. He is wanting the Court to take his thumb impressions and then send the same for comparison either to a private Fingerprint Expert or to the Forensic Science Laboratory.

It is settled proposition of law that the petitioner cannot invoke the jurisdiction of this Court under Section 482 Cr.P.C. after dismissal of the revision by the Sessions Court as it amounts to a second revision. The Court can interfere in the case of grave injustice. The exercise of power under Section 482 Cr.P.C. is an exception and not the rule and can be exercised under three circumstances namely (i) to give effect to an order under the Code, (ii) to prevent abuse of process of court, and (iii) to otherwise secure the ends of justice.

The inherent powers cannot be exercised to collect evidence for the accused. Keeping in view the principles of law, I am of the view that there is no merit in the petition and the same is dismissed. It is, however, made clear that the petitioner can approach the Court for summoning his witnesses, if not already done.

(ANITA CHAUDHRY)
JUDGE

27.04.2015
Sunil