

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRM No. M-9006 of 2014

Date of decision: 24.02.2015

Gram Panchayat Sarhala

.....Petitioner

versus

Swaran Singh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vivek Salathia, Advocate for the petitioner
Mr.P.B.S.Goraya, Advocate for respondent Nos.1 to 6 & 8

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

Kuldip Singh, J. (Oral)

Challenged in the present petition is the order dated 6.3.2014 (Annexure P1), passed by learned Chief Judicial Magistrate, Amritsar, vide which, the application filed by the complainant Gram Panchayat under Section 311 Cr.P.C. for summoning certain witnesses was declined.

I have heard learned counsel for the parties and have carefully gone through the file.

The present application (Annexure P4) shows that in the application, following witnesses were sought to be summoned:-

- (i) *Panchayat Secretary Gram Panchayat Sarhala Block Majitha alongwith record of resolution dated 18.6.2007*
- (ii) *Concernd clerk/ record keeper of DDPO Amritsar alongwith record of case file titled as Gram Panchayat*

Sarhala vs. Swaran Singh decided on 17.1.2014 by the court of Shri Surinder Pal Angra Collector cum DDPO, Amritsar in case No.1024.

(iii) Concerned clerk/ Record Keeper of SDM Amritsar-1 alongwith record of enquiry conducted by SDM Amritsar regarding the encroachment of land of village Sarhala on the application of Smt. Gurmeet Kaur Sarpanch sent to Deputy Director Panchayat Punjab vide letter No. Steno/ 1077 dated 14.11.2013.

(iv) Concerned clerk of BDPO Majitha alongwith record of letter No.231 dated 12.1.2007 written to SHO Kathu Nangal regarding the removal of encroachment.

(v) Rohit Gupt Draftsman District Courts Amritsar to prove the site plan dated 25.5.2007.

The perusal of the complainant, copy of which has been annexed as Annexure P2, shows that there were allegations by the Gram Panchayat that accused have encroached upon the panchayat land. Learned Chief Judicial Magistrate, Amritsar declined the application on the ground that earlier application was filed for summoning BDPO Majitha. Order dated 15.2.2014, declining the said prayer, as reproduced in the petition shows that the same was simple application for summoning the witnesses from BDPO Majitha and it was not an application under Section 311 Cr.P.C., which stands at different footing. Section 311 Cr.P.C. lays down 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.

Therefore, it is evident that when the witnesses are material, the Court has no option but to summon the witnesses.

After going through the list of the witnesses and the purpose for which they are sought to be summoned, I am of the view that they are material witnesses and need to be examined to prove the allegations levelled in the complaint. The mere fact that case falls in the category of *Samadhan*, is no ground to dismiss the application and throttle the justice.

Accordingly, the petition is allowed and impugned order dated 6.3.2014 (Annexure P1) is set aside and the witnesses, mentioned above, are ordered to be summoned.

24.02.2015

gk

(Kuldip Singh)

Judge