

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.29446 of 2014

and

Criminal Revision No.3016 of 2014

.....

Date of decision:16.1.2015

State of Punjab

...Petitioner

v.

Balwinder Singh and others

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Varun Sharma, Assistant Advocate General, Punjab for
the petitioner-State.

.....

Inderjit Singh, J.

Cr. Misc. No.29446 of 2014:

For the reasons mentioned in the criminal miscellaneous application, the delay of 54 days in filing the criminal revision petition is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Rev. No.3016 of 2014:

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned order dated 24.4.2014 passed by the learned Sessions Judge, Hoshiarpur, vide which application filed under Section 311 Cr.P.C. has been dismissed.

[2]

It is mainly stated in the petition that the impugned order dated 24.4.2014 passed by the learned Sessions Judge, Hoshiarpur is against law and facts of the case and is liable to be set aside. The impugned order is non-speaking, arbitrary and the application under Section 311 Cr.P.C. has been wrongly dismissed by the Court without applying its judicial mind.

Mr. P. S. Ahluwalia and Mr. Sanjay Gupta, learned counsel for the respondents accept notice, who are present in the connected petitions.

First of all a petition under Section 482 Cr.P.C. is maintainable and not a criminal revision petition, as an order passed on an application under Section 311 Cr.P.C. is an interlocutory order. As this is only a technicality, therefore, this criminal revision petition is converted into a petition filed under Section 482 Cr.P.C.

As per the petitioner-State, an application under Section 311 Cr.P.C. was filed by the prosecution for recalling PW-4 HC Satnam Singh. It was claimed that on 15.5.2006, MHC Satnam Singh sent two sealed parcels of plastic boxes containing four empty cartridges of .9 mm through PRHC Vijay Kumar to FSL, Kharar, but the same received back along with report. Said HC Vijay Kumar deposited those parcels in intact condition and after reaching at Police Station, Mukerian, he deposited receipt with MHC Satnam Singh. However, these facts could not be mentioned in the affidavit Ex.PW.4/A inadvertently. One .9 mm pistol was recovered from the possession of accused Ranbir Singh by CIA staff

[3]

of Shaheed Bhagat Singh Nagar in case FIR No.38 dated 22.3.2006 registered for the offence under Section 25 of the Arms Act. Parcel of the said pistol was sealed by the Investigating Officer of the case, namely, Harjit Kumar with his seal bearing impression 'HK' and the same was taken in possession. That parcel was also deposited with MHC of Police Station, Rahon, which was also sent to FSL. Sealed parcels were re-deposited with MHC Satnam Singh, which was sent to FSL through HC Sukhwinder Singh along with Rapat dated 28.12.2005. That parcel was redeposited again in FSL through constable Vijay Kumar on 15.5.2006. To complete the link evidence, re-examination of MHC Satnam Singh was stated to be essential. Therefore, that application was filed.

I have heard learned State counsel as well as counsel for the respondents.

From the record, I find that the evidence which the prosecution wants to prove under Section 311 Cr.P.C. by examining MHC Satnam Singh is essential and necessary for the just decision of the case. The mere fact that the application has been filed after seven years of examination of witnesses is no ground to disallow the application. The Court is only to see whether his recalling as a witness is essential and necessary for the just decision of the case or not.

Keeping in view the facts and circumstances of the case, I find that the recalling of HC Satnam Singh for further examination is necessary and essential for the just decision of the case. Otherwise, link evidence will remain incomplete.

[4]

Further more, no prejudice is going to be caused to the respondents. They have every right to cross-examine this witness and also they can lead defence evidence if they desire to do so to rebut that evidence. The mere fact that application has been filed late is no ground to dismiss the same.

Therefore, finding merit in this petition, the same is allowed. The application filed under Section 311 Cr.P.C. for recalling PW-4 HC Satnam Singh is allowed.

January 16, 2015.

(Inderjit Singh)
Judge

hsp