

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3735-2015 (O&M)
Date of decision: 05.10.2015

Sukhdev and ors.

... Petitioners

Vs.

State of Haryana and anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. S.S. Majithia, Advocate
for the petitioners

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Instant criminal revision petition is directed against the order dated 23.09.2015 passed by learned trial Court, whereby application moved by the petitioners under Section 311 of the Code of Criminal Procedure ('Cr.P.C.' for short), for recalling PW14 Nirmal Singh for his further cross-examination, was dismissed.

Learned counsel for the petitioners submits that because of inadvertent mistake on the party of counsel for the petitioner before the learned trial Court, pertinent question could not be put to PW14 Nirmal Singh, because the petitioner was not having the knowledge of pedigree table (Annexure P-3) at that point of time. He further submits that once the pedigree

table came to the knowledge of the petitioner, application under Section 311 Cr.P.C. was moved. He also submits that although this witness PW14 was cross-examined at length but until he is confronted by the petitioner in his further cross-examination with the pedigree table, petitioner would not be in a position to shatter the reliability of the statement made by PW14 Nirmal Singh. This was the reason that recalling of PW14 was necessary and it would have facilitated the learned trial Court to arrive at a judicious conclusion. He concluded by submitting that since the learned trial Court has failed to appreciate this factual aspect of the matter, while passing the impugned order, the same is liable to be set aside. He prays for allowing the present petition, by setting aside the impugned order.

Having heard the learned counsel for the petitioners at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to contentions raised, this Court is of the considered opinion that instant one has not been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction, which itself is a limited one. To say so, reasons are more than one, which are being recorded hereinafter.

A bare reading of the impugned order would show that the learned trial Court was alive to the fact situation obtaining in the present case, including the credibility of testimony of this witnesses PW14 namely Nirmal Singh. This was the reason that the learned trial Court has left it open, specifically observing in the impugned order itself, that credibility of testimony of this witness will be considered at the time of final stage. It has further been rightly observed by the learned trial Court that even if PW14

Nirmal Singh is recalled, it will not change the last seen theory of this case. Having said that, this Court feels no hesitation to conclude that learned trial Court committed no error of law, while passing the impugned order and the same deserves to be upheld.

Considering the object of Section 311 Cr.P.C., this Court is of the view that it is not the satisfaction of the applicant which is material, but if the learned trial Court comes to the conclusion, that recalling of any particular witness would be essential for facilitating the Court to arrive at a judicious conclusion, the learned Court would do well, while directing recalling of any particular witness for the purpose of further cross-examination. However, in the peculiar facts and circumstances of the present case, the learned trial Court did not find it essential to recall this witness PW14, because it was not found justified by the learned trial Court that recalling of this witness would facilitate the learned Court for arriving at a judicious conclusion.

In fact, after considering the purpose of recalling of PW14, the learned trial Court has found application moved by the petitioner to be misconceived. It has also been observed by the learned trial Court in the impugned order that this witness PW14 was cross-examined at length and his cross-examination runs into 10 pages. Further, even recalling of this witness was not going to change the fact situation about the last seen theory. Under these circumstances, it can be safely concluded that the learned trial Court was fully justified on facts as well as in law to pass the impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case

noted above, coupled with the reasons aforementioned, this Court is of the considered view that present petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no orders as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

05.10.2015
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