

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.5223 of 2015
and
Criminal Revision No.529 of 2015 (O&M)

.....

Date of decision:18.2.2015

Kulwinder Singh alias Rocky

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Ms. Jigyasa Tanwar, Advocate for the petitioner.

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Inderjit Singh, J.

Cr. Misc. No.5223 of 2015:

For the reasons mentioned in the criminal miscellaneous application, the delay of 90 days in filing the revision petition is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Rev.529 of 2015:

This criminal revision petition has been filed under Section 401 Cr.P.C. against the impugned order dated 16.8.2014 passed by learned Special Judge, Fatehgarh Sahib, vide which the Court has dismissed the application filed under Section 310 Cr.P.C. for seeking local inspection.

It is mainly stated in the grounds of revision that one of the

main allegation against the petitioner is that 10 Kgs. heroin had been recovered from 'Accent' car bearing registration No.CH-03-W-8549, which was alleged to have been lying parked in his house at Village Naya Shehar, Tehsil Kharar, District Mohali on the basis of disclosure statement of the petitioner. It is also stated in the petition that though the investigating agency had prepared a rough site plan of the courtyard of the house of the petitioner but that place is too small for an 'Accent' car to be parked.

I have heard learned counsel for the petitioner and have gone through the record.

Section 310 Cr.P.C. provides as under:-

“310. Local inspection.- (1) Any Judge or Magistrate may, at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him free of cost.”

From the perusal of provision of Section 310 Cr.P.C., it is clear that the Judge or the Magistrate may, at any stage of any inquiry, trial or other

proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial. As per this provision, it is for the Magistrate himself/herself to inspect the site if he/she thinks it necessary for properly appreciating the evidence. Any of the party as a matter of right cannot ask the Judge or Magistrate to visit and see the place of occurrence. If this is allowed, then every accused will file an application under Section 310 Cr.P.C. asking for the Magistrate to inspect the spot/place of occurrence. It is not the work of the Judge or the Magistrate to inspect the site or to collect the evidence for any party. This provision is made for the Court itself that if Judge or Magistrate wants to inspect the spot or the place of occurrence and in his/her opinion necessary for the purpose of properly appreciating the evidence, then he/she can visit the spot.

As regards the accused, he will have the opportunity to produce the defence evidence by producing the site plan of the place of recovery to show that 'Accent' car cannot go to the house and cannot be parked in the house. The accused will have also the opportunity to produce defence evidence by bringing oral evidence etc. to prove this fact which is to be appreciated by the trial Court.

In the present case, the application has been filed even before framing of the charges. In my view, the impugned order passed by the learned Special Judge on the application filed under Section 310 Cr.P.C is

correct and as per law. No illegality has been committed by the Court.

Finding no merit in this criminal revision petition, the same is dismissed.

February 18, 2015.

(Inderjit Singh)
Judge

hsp