

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

CRM-M-10919 of 2016.
Decided on:-31.03.2016.

Maninder Grewal.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. R.S. Pandher, Advocate for the petitioner.

HARI PAL VERMA, J.

Petitioner Maninder Grewal has filed the present petition under Section 482 Cr.PC for quashing of the part of order dated 24.2.2016 passed by learned Sub-Divisional Judicial Magistrate, Derabassi.

Vide impugned order dated 24.2.2016, learned Magistrate has declined prayer of the petitioner-complainant for examination of witness Rajbir Singh son of R.S. Grewal by holding that the entire complaint and testimony of complainant witnesses nowhere disclose any role of the said witness in the entire matter. However, in view of 'no objection' given by the accused, the petitioner-complainant was permitted to place on record DDR No.18 dated 1.4.2011, electoral/voter record of Vote No.279-PB-A/448989 in the name of Harjit Singh Chima son of Sh. J.S. Chima, vote No.280-PB-A-487922 in the name of Inderjit Kaur wife of Harjit Singh and vote No.281-PB-A-5052899 in the name of Priyajit Chima daughter of Harjit

Singh Chima and medical record of late Mohinder Kaur.

Thus, the petitioner has filed the present petition seeking examination of witness, namely, Rajbir Singh.

Learned counsel for the petitioner-complainant has argued that request of the complainant for examination of witness Rajbir Singh has wrongly been declined by the trial Court despite the fact that provisions of Section 311 Cr.PC having wider scope and need to be applied liberally. The examination of witness Rajbir Singh is just and relevant to explain certain facts of the entrustment of the vehicle/property to the accused. Rajbir Singh has personally entrusted the property qua which the accused has committed the offence of criminal breach of trust.

I have heard learned counsel for the petitioner.

The application filed by the petitioner-complainant is very sketchy and evasive as neither the complaint nor the testimony of complainant's witnesses nowhere discloses any role of witness Rajbir Singh in the entire matter. Since the complainant has failed to disclose even a single word as to how examination of Rajbir Singh is relevant for just and fair decision of the case, learned Magistrate has rightly declined his prayer.

So far as provision under Section 311 Cr.PC is concerned, no doubt, said provision is required to be applied liberally, but when the petitioner-complainant has failed to make out a case for examination of witness Rajbir Singh, no benefit can be claimed by him under the said provision.

Hon'ble Supreme Court in ***Rajaram Prasad Yadav Versus State***

of Bihar and another 2013(3) RCR (Criminal) 726 has held that the exercise of said power cannot be dubbed as filling in a lacuna in the prosecution case unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

Similarly, in the case of *Gyanendra Kumar Rawat Versus State of UP (All) 2014(7) RCR (Criminal) 244*, Hon'ble Allahabad High Court has held that where the prosecution has moved an application under Section 311 Cr.PC, when the names of the persons summoned as witnesses do not find mention in the list of witnesses, the prosecution cannot be permitted to fill up the lacuna after it has examined all the witnesses.

In these circumstances, the petitioner-complainant, in absence of there being any mention of name of witness Rajbir Singh either in the complaint or in the testimony of complainant's witnesses, cannot be permitted to examine the said witness. Summoning of said witness, whose name has come for the first time in the application under Section 311 Cr.PC would lead to great prejudice to the respondents.

In view of the above, I find no infirmity, illegality or perversity in the impugned order dated 24.2.2016 passed by learned Magistrate, Dera Bassi. As such, affirming the impugned order, the present petition, being devoid of any merit, is dismissed.

March 31, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE