

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

**Criminal Misc. No. M-12618 of 2016
Date of Decision:-02.08.2016**

Gurminder Singh @ Bawa and another

...Petitioners

Versus

State of Punjab and another

...Respondents

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

Present:- Mr. H.P.S. Ghuman, Advocate
for the petitioners.

HARI PAL VERMA J.

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing of impugned order dated 26.2.2016 (Annexure P-1) passed by learned Judicial Magistrate 1st Class, Nabha in FIR No.24 dated 27.2.2014, under Sections 420, 406, 465, 467, 468, 471 and 120-B IPC, registered at Police Station Sadar Nabha, whereby the application filed by respondent No.2 under Section 311 Cr.P.C. summoning the concerned clerk from the complaint branch, S.S.P. Office, Patiala has been allowed.

The aforesaid FIR was registered on the basis of complaint made by respondent No.2. Accordingly, the police investigated the matter and submitted the challan as provided under Section 173 Cr.P.C. against the

petitioners, leading them to face the trial. During the course of trial, the respondent No.2-complainant had moved an application under Section 311 Cr.P.C. seeking summoning of the concerned clerk/official from the complaint Branch, S.S.P. Office, Patiala alongwith original application moved by the complainant as it has transpired that due to inadvertance, the Investigating Officer had not attached the original application moved by the complainant.

The petitioners have filed reply to the said application pleading therein that the application was filed with malafide intention. The photocopies of the complaints/applications are not attached with the challan presented in the Court, therefore, it cannot be brought on record under Section 311 Cr.P.C.

Learned counsel for the petitioners has argued that once the complaints are not made the part of the challan, the trial Court should not have allowed the application under Section 311 Cr.P.C. It is the duty of the investigating agency to collect the material and to attach the same at the time of presentation of challan. He further states that the trial Court has not appreciated that in the application moved by the complainant it has nowhere stated that the documents were brought to the notice of the investigating agency but have not been taken into consideration. The FIR in question was registered on 27.2.2014. Statements of Amanpreet Singh, Kanwaldeep Singh, Gurwinder Singh and Deepak Garg were recorded by the Investigating Officer and in the statements, the said witnesses had nowhere stated that they had ever approached to the SSP, Patiala with any complaint

whatsoever against the petitioners. The challan was presented in the Court on 8.1.2015 and these complaints were not brought on the record.

I have heard learned counsel for the petitioners.

The relevant provision of Section 311 Cr.P.C. reads 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.”

A bare perusal of Section 311 Cr.P.C. provides that the Court may at any stage of inquiry or trial or any other proceedings may summon any person as witness if its evidence appears to be essential for the just decision of the case. In the case in hand respondent No.2-complainant has made an application seeking summoning of the original record and the prosecution has treated the same as relevant for just decision of the case. When any witness referred in the application under Section 311 Cr.P.C. is ordered to be summoned and examined, the petitioners also would have an opportunity to cross-examine the said witness. Moreover, through the application under Section 311 Cr.P.C., the respondent-complainant want to bring on record that the present case has been lodged against the accused persons on the application moved by the complainant as refer in para 2 of the complaint. Therefore, this Court finds that there is no illegality in the

order dated 26.2.2016 passed by learned JMIC, Nabha.

The present petition is dismissed.

August 02, 2016
Vijay Asija

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes / No

Whether Reportable

Yes / No