

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No. M-23275 of 2016

Date of Decision: 13.07.2016

Ram Chander

...Petitioner(s)

Versus

Satpal Gupta & others

...Respondent(s)

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. G.S. Bedi, Advocate
for the petitioner.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for setting aside the order dated 7.5.2016 (Annexure P-4) passed by Judicial Magistrate Ist Class, Pataudi, whereby the application under Section 311 CrPC filed by the petitioner-complainant for summoning eight persons, as witnesses, in Complaint Case No.244/2011 dated 6.12.2011 and 17.9.2013 was dismissed.

Briefly stated, the petitioner filed a complaint against the respondents-accused, alleging therein that the respondent No.4 - Rajesh son of Chuttan had agreed to sell the property of Satpal Gupta son of Matadin

vide agreement to sell dated 10.12.2010 in respect of land bearing khewat khata No.72/75, Khatauni No.231, Qila No.16, measuring 6 kanals 10 marlas, undivided share of 3/260 i.e. 1½ marla for Rs.4500/- per square yard and had represented themselves to be the owners of the property, by showing their names in column no.4 of the jamabandi. They had also received Rs.1,50,000/-, as earnest money, from the petitioner. The petitioner was put in possession and he raised construction and also started living there. But despite repeated requests, the registration was not done in the name of the petitioner. On the evening of 27.11.2011, the respondents-accused came to the house of the petitioner and tried to turn him out of the house. They also threatened the petitioner that they have entered into an agreement to sell for wrong khasra numbers. Accordingly, the petitioner filed the present complaint against the respondents-accused. Along with the complaint, the petitioner filed a list of witnesses, whom he sought to examine. On the basis of pre-summoning evidence, learned trial Court vide order dated 3.5.2013 summoned the accused for commission of offence under Sections 420, 467, 468, 452, 323, 506 read with Section 34 IPC.

While the aforesaid complaint was pending before the trial Court, the petitioner moved an application under Section 311 CrPC for leading additional evidence and to examine eight additional prosecution witnesses, as mentioned in para 2 of the application. However, learned trial Court observed that as per Section 204 CrPC, it is mandatory for the prosecution to provide a list of witnesses to be examined before pre-charge evidence, but as no such list, showing eight prosecution witnesses, in the

complaint was filed, the aforesaid application under Section 311 CrPC was dismissed by learned Judicial Magistrate Ist Class, Pataudi vide order dated 7.5.2016.

It is in the aforesaid circumstances, the petitioner has filed the instant petition challenging the order dated 7.5.2016 (Annexure P-4).

Learned counsel for the petitioner has argued that on the basis of averments made in the complaint, a prima facie case for commission of offence under Sections 420, 467, 468, 452, 323, 506 read with Section 34 IPC was made out against the respondents-accused and accordingly, the learned Magistrate has summoned the accused. However, inadvertently, the petitioner could not specifically mention the names of specific persons, in the list of witnesses and therefore, the present application under Section 311 CrPC, for summoning of witnesses, as mentioned in the application, was filed. However, learned Magistrate has dismissed the said application solely on the ground that the same was filed at a belated stage with an impression that it aimed at prolonging the proceedings. He submits that as per the spirit of provisions of Section 311 CrPC, it is well within the purview of the Court to summon, examine or recall or re-examine any person as a witness if his evidence appears to be necessary for just decision of the case. Present is a case where the proposed witnesses are necessary for the just decision of the case. The present application filed under Section 311 CrPC never intended to prolong the proceedings.

I have heard learned counsel for the petitioner.

As per the provisions of Section 204 CrPC, prosecution/complainant is required to submit a list of witnesses to be examined before

pre-charge evidence. The plea of the petitioner that the abovesaid witnesses could not be summoned inadvertently, is not acceptable for the reason that through the instant application, the petitioner intended to summon as many as eight prosecution witnesses, which means that he intends to build up a new case. It is very difficult to believe that these witnesses were not in the knowledge of the petitioner, as the order dated 7.5.2016 reveals that the petitioner has filed the application under Section 311 CrPC on 10th opportunity i.e. after much belated stage and out of these, four opportunities were recorded as last opportunities, for leading pre-charge evidence. Therefore, the plea of the petitioner that the present application has not been filed at a belated stage, cannot be accepted. Since the petitioner has failed to adduce the list of witnesses before pre-charge evidence, through the instant application, he intends to introduce eight new prosecution witnesses, despite availing numerous opportunities, which cannot be allowed at this stage.

In view of the aforesaid, no illegality can be found in the impugned order.

Accordingly, the present petition is dismissed.

July 13, 2016
AK

(HARI PAL VERMA)
JUDGE