

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

Criminal Misc. No.M-44211 of 2015

Date of Decision:-27.01.2016

Raj Kumar

...Petitioner

Versus

Gurdial Singh

...Respondent

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. Aseem Kataria, Advocate for the petitioner.

Mr. Sunil Doda, Advocate for the respondent.

HARI PAL VERMA J.(Oral)

Prayer made in the present petition filed under Section 482 Cr.P.C. is for quashing the order dated 17.11.2015 (Annexure P-2) passed by learned SDJM, Abohar, whereby the application filed by the petitioner under Section 311 Cr.P.C. for recalling the complainant, namely, Gurdial Singh for his further cross-examination as CW1, has been dismissed.

Learned counsel for the petitioner contends that in the application, it was mentioned that during the cross-examination of the complainant, he could not be properly cross-examined as certain material aspects have been left out by the counsel for the petitioner/accused due to lack of briefing. In the grounds of

revision, it has been specifically pleaded that further cross-examination of the complainant is necessary to ascertain the material aspects which has recently come to the knowledge of the petitioner-accused. The petitioner has come to know the fact that as many as 12 similar complaints have been filed by the respondent-complainant before the learned trial Court and cross-examination to this effect that respondent-complainant is a money lender and he regularly deals in the business of money lending, is necessary. These facts were not within the knowledge of the petitioner at the time of cross-examination of the respondent-complainant initially.

Mr. Sunil Doda, Advocate has put in appearance on behalf of the respondent-complainant and filed his Power of Attorney in Court today, which is taken on record. He stated that the petitioner has filed the present application at a belated stage, when statement under Section 313 Cr.P.C. has already been recorded and learned trial Court dismissed the said application by observing that the application is aimed to fill up the lacuna. Therefore, the present petition is liable to be dismissed.

I have heard learned counsel for the parties.

This Court in the case of **M/s. Shareen Hire Purchase Pvt. Limited Versus Kulwinder Kaur 2011(3) R.C.R. (Criminal) 299**, has observed that a bare perusal of Section 311 Cr.P.C. provides vast powers to the Court to summon “any person” as a witness or recall or examine any witness if already examined “at any stage” of inquiry, trial or other proceedings and a Court cannot be a silent spectator and to ensure that one of the requirements while allowing or not allowing the recalling of the witness is that the

Court must make sure that the same does not result in miscarriage of justice. Therefore, recalling of witness is required in order to prove the documents or such like statement to the effect that the respondent-complainant has filed as many as 12 cases and is regularly dealing in business of money lending.

Section 311 of the Code of Criminal Procedure reads as under:-

“Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person its 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”.

Therefore, I am of the view that recalling of the witness is required in order to prove the documents which have been produced on the asking of the accused. Thus, a fair chance has to be given to the petitioner to prove the same, to arrive at the truth which is the only object and guideline while exercising the powers under Section 311 of the Code of Criminal Procedure.

Resultantly, the present petition is allowed and the order dated 09.12.2015 (Annexure P-4) passed by learned Addl. Sessions Judge as well as the order dated 17.11.2015 (Annexure P-2) passed by learned SDJM, Abohar, are set aside, subject to cost of Rs.5,000/- to be disbursed to the respondent-complainant.

The learned trial Court is directed to recall the respondent-complainant, namely, Gurdial Singh for his further cross-examination on the aforesaid limited aspects, subject to the

payment of Rs.5,000/-to be paid by the petitioner before the trial Court and the said amount shall be disbursed to the respondent-complainant.

27.01.2016

Anjal

(HARI PAL VERMA)

JUDGE