

CRM-M-803-2015

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

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Date of Decision: 01.12.2016

Rohit Uppal

... Petitioner

Versus

State of Punjab and others

... Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr. Raman Goklaney, Advocate,
for the petitioner.

Mr. Varun Sharma, AAG, Punjab.

Ms. Pooja Chopra, Advocate,
for respondent Nos.2 and 3.

INDERJIT SINGH, J.

Petitioner, Rohit Uppal has filed this petition against respondents, State of Punjab, Balwinder Kaur and Swaran Singh, under Section 482 Cr.P.C., for quashing of the order dated 14.08.2014 (Annexure P-1) passed by learned Additional Sessions Judge, Ferozepur in Criminal Revision No.34 dated 27.05.2014 whereby order dated 01.04.2014 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Zira allowing the application under Section 311 Cr.P.C. for recalling witnesses i.e. PW 1 Surjit Singh and PW 2 Rohit Uppal, has been set aside.

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Notice of motion was issued. Learned State counsel put in appearance on behalf of respondent No.1-State and respondent Nos.2 and 3 also appeared through their counsel. They contested this petition.

I have heard learned counsel for the petitioner; learned State counsel as well as learned counsel for respondent Nos.2 and 3 and have gone through the record.

From the record, I find that during the pendency of trial before learned Judicial Magistrate Ist Class, Zira, an application under Section 311 Cr.P.C. was filed seeking permission to summon/recall witnesses i.e. PW 1 Surjit Singh and PW 2 Rohit Uppal on the ground that at the time of examination-in-chief, record of agreement etc. was not available and, therefore, both these witnesses could not be examined on the point of agreement etc. The original agreement is lying in the Court of learned Additional Civil Judge, Zira in a civil suit. As the documents i.e. agreement, power of attorney, receipt etc. could not be summoned earlier, therefore, both these witnesses could not be examined to that effect. It is stated in the application that further cross-examination of abovesaid witnesses is still pending.

Learned Judicial Magistrate, Ist Class, Zira, after hearing the arguments, allowed the said application vide order dated 01.04.2014 (Annexure P-5). Feeling aggrieved against the said order dated 01.04.2014, respondent No.2 preferred revision which has been allowed and the order dated 01.04.2014 has been set aside, vide impugned order dated 14.08.2014 passed by learned Additional Sessions Judge, Ferozepur.

From the record, I find that first of all, any order passed on the

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application under Section 311 Cr.P.C., is an interlocutory order and revision is not maintainable, therefore, revision petition before learned Sessions Court was not maintainable and learned Additional Sessions Judge, Ferozepur has no jurisdiction to set aside the order dated 01.04.2014 (Annexure P-5). It is settled principle of law that quashing petition challenging the validity of interlocutory order lies before the Court under Section 482 Cr.P.C. The Hon'ble Supreme Court in ***Sethuraman vs. Rajamanickam*** 2010 (5) R.C.R. (Criminal) 512 has held that order passed by the trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., is interlocutory one and, therefore, revision against the same under Section 397 (2) Cr.P.C. before High Court is not maintainable.

Secondly, on merits, I find that only examination-in-chief of aforesaid two witnesses has been recorded, when the application under Section 311 Cr.P.C. has been filed to further examine the witnesses in chief regarding the agreement, power of attorney and receipt etc. The cross-examinations of these witnesses has already been deferred. If the witnesses are examined-in-chief to prove these documents, no prejudice is being caused to the accused as they are still to be cross-examined.

From the above discussion, I find that the order dated 01.04.2014 passed by learned Judicial Magistrate Ist Class, Zira is correct and as per law. No illegality was committed by the Judicial Magistrate Ist Class, Zira while passing the said order and the same was not liable to be set aside.

Therefore, finding merit in the present petition, the same is

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allowed; the impugned order dated 14.08.2014 (Annexure P-1) is set aside and the order dated 01.04.2014 (Annexure P-5) is upheld being passed as per law.

01.12.2016
parveen kumar

(INDERJIT SINGH)
JUDGE

Note:	Whether speaking/reasoned	:	Yes
	Whether reportable	:	No