

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

**CRM No.M-9222 of 2016
Date of Decision: March 16, 2016**

Sumesh Sood **Petitioner**

vs.

Ajit Kumar and another **Respondents**

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Rahul Rampal, Advocate for the petitioner.

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment?*
- 2. To be referred to the Reporters or not?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh J.(Oral)

Impugned in the present petition is the order dated 04.12.2015 (Annexure P-3) passed by learned Addl. Sessions Judge, Ludhiana, upholding the order dated 28.07.2015 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the application filed by the complainant under Section 311 Cr.P.C. for summoning the additional witnesses was dismissed.

Briefly stated, by way of application filed under Section 311 Cr.P.C., the complainant wanted to summon the following witnesses:

1. Concerned official of Punjab Housing Finance, Feroze Gandhi Market, Ludhiana with complete record of the house loan taken by petitioner Sumesh Sood.
2. Concerned official of the office of Sub-Registrar, Ludhiana with complete record of sale deed pertaining to vasika No.14378, dated 31.12.2001 in the name of petitioner Sumesh Sood.
3. Inspector Rajinder Singh Sohal, former S.H.O., P.S. Sadar, Ludhiana.

I have heard learned counsel for the petitioner and have also carefully gone through the case file.

Learned counsel for the petitioner contends that the present case is one of the oldest cases, in which more than 100 opportunities were granted to conclude the evidence but only four witnesses have been examined. As such, further opportunity to lead the evidence much less additional evidence was declined.

Learned counsel for the petitioner has argued that under Section 311 Cr.P.C., the number of opportunities are irrelevant and that if the witnesses are material, the court is to summon the said witnesses and whether the witnesses are material or not, depends upon the facts of each case.

It is a State case, in which the investigation was carried out. In the report filed under Section 173 Cr.P.C., the prosecution has to rely upon the documents, which are sought to be proved against the accused and also has to submit the list of witnesses. The copies of the documents and the list of the witnesses sought to be relied upon have to be supplied to the accused.

The FIR in this case was registered in the year 2004 and the trial is going on. Earlier, the complainant slept over the matter and now suddenly he wants to examine some more witnesses. So far as the examination of Inspector Rajinder Singh Shal is concerned, it is not mentioned for which reason, he is to be examined. The documents, which are sought to be produced are only regarding the house loan and sale deed of the petitioner.

The court has to strike balance between the rights of the prosecution and the rights of the accused. I think that when 100 opportunities have been granted, the lower court is justified in closing the prosecution evidence by orders. Therefore, while exercising the powers under Section 482 Cr.P.C., this Court does not find it a fit case, where such powers should be exercised.

Learned counsel for the petitioner has relied upon the authority of Hon'ble the Supreme Court delivered in case of ***“Himanshu Singh Sabharwal vs State of M.P. and others”, 2008 (2) R.C.R.(Criminal) 267.***

However, the balance is to be struck between the rights of the prosecution and the accused. There has to be some end to the litigation. No ground is made out to interfere in the impugned orders passed by both the Courts below.

Accordingly, the present petition stands dismissed.

March 16, 2016
sarita

(KULDIP SINGH)
JUDGE