

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

CRR No.3141 of 2015 (O&M).
Decided on:-16.02.2016.

Anil Garg.

.....Petitioner.

Versus

State of Punjab.

.....Respondent.

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

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. K.B. Raheja, Advocate for the petitioner.

Mr. Gurinderjit Singh, DAG, Punjab.

Mr. A.K. Khunger, Advocate for the complainant.

HARI PAL VERMA, J.

Petitioner, namely, Anil Garg son of Daya Nand Garg, resident of Street No.3, Krishna Nagari, Abohar, Tehsil Abohar, District Fazilka has filed the present revision petition challenging order dated 29.7.2015 passed by learned Additional Sessions Judge, Fazilka whereby his application under Section 91 Cr.PC seeking direction to the investigating officer to produce the statement of witnesses was rejected. While dismissing the application, learned Court has observed that the petitioner has every right to call the statement of witnesses during his defence to prove his innocence, if any.

Briefly stated, FIR No.10 dated 11.1.2014 under Section 306 read with Section 34 IPC was registered at Police Station City-I, Abohar

against the petitioner, his son and wife on the statement of Monika Garg wife of late Ved Garg. As per the FIR, she was married with Ved Garg about 12 years back and two children were born out of this wedlock. After the marriage, the accused including the petitioner started harassing the complainant and her husband and stated that they will not give any share from the shop and house. The husband of the complainant was upset. The complainant was informed by her husband that the petitioner, his son Vishnu Garg and wife Manju Garg have forcibly sent him out of the shop. After saying so, he went out from the house and after some time returned back to home and told the complainant that he is going. It seems that he had consumed some poisonous substance making allegations of Section 306 IPC against the petitioner, his son and wife.

When the matter was pending before the trial Court, the petitioner moved an application under Section 91 Cr.PC seeking direction to the investigating officer to produce the statement of witnesses, namely, Brhama Nand son of Nanak Chand, Kewal Krishan son of Kochar Chand, Harbans Lal son of Sham Lal and Sanjeev Kumar son of Sant Lal, all residents of Mandi No.1, Abohar. As per application DSP Jagdish Bishnoi has conducted investigation in FIR No.10 dated 11.1.2014 and during investigation, he has recorded statement of the aforesaid referred witnesses. These persons are running their shops adjoining to the shop of the petitioner. It has been alleged that though the investigating officer has placed on file the

investigation report of the DSP, Abohar dated 16.7.2014, but has deliberately not produced the relevant record collected and statements recorded during the investigation which proves the innocence of the petitioner.

Learned Additional Sessions Judge, Fazilka vide order dated 29.7.2015 has dismissed the application under Section 91 Cr.PC by observing that the petitioner has every right to call these witnesses during his defence to prove his innocence and the same are not relevant at the stage of framing of charge.

Learned counsel for the petitioner while impugning the order passed by the trial Court has referred to the judgment of Hon'ble Rajasthan High Court (Jaipur Bench) in ***Dhananjay Kumar Singh Versus State of Rajasthan 2006(4) RCR (Criminal) 163*** to contend that the prosecution cannot withhold the statement and evidence which was in favour of the accused and, therefore, the police while investigating the case and putting up the Challan is required to attach the statement of the witnesses. He has further submitted that non-submission of the statement of witnesses as collected during investigation shall result in miscarriage of justice and incase the statement of witnesses is placed before the trial Court for its consideration, there is enough material that even charge may not be framed.

Learned counsel for the complainant, on the other hand, has argued that the police has submitted Challan in its entirety and all the relevant material is otherwise attached with the Challan.

I have heard learned counsel for the parties.

The provision of Section 91 Cr.PC reads as under:

“Summons to produce document or other things.-(1)

Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time of and place stated in the summons or order.

(2) Any person required under this Section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872(1 of 1872) or the Bankers, Books Evidence Act, 1891 (13,of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

The point for consideration before this Court is as to whether the petitioner who is accused has the right to access all the evidence collected by the investigating agency during the course of investigation and as to whether the investigating agency or the prosecution can withhold

evidence which the accused claims to be in his favour merely on the ground that the prosecution does not want to rely on such evidence. The limited prayer of the petitioner in the application is that the statement of witnesses recorded by the investigating agency be produced at the time of framing of charge. This contention of learned counsel for the petitioner has though been opposed by learned counsel for the complainant that it is discretion of the Court to direct the investigating agency to produce such like statement of witnesses.

In *Dhananjay Kumar Singh's case (supra)*, it has been held that the prosecution cannot withhold the statement and evidence which was collected by the police during investigation of the case and the statements are required to be submitted along with Challan, more particularly when the statements are in favour of the accused. No doubt, under Section 91 Cr.PC the accused can seek summoning of case diary and other evidence which was in his favour, but it is for the Court to decide whether they are necessary or desirable for the just decision of the case. In the said judgment, Hon'ble Rajasthan High Court has observed in para No.37 as under:

“37. The upshot of the discussion is that under Section 91 of the Code the accused can seek the summoning of the case diary/documents. It is for the Court to decide if the case diary/documents are "necessary or desirable" for the just decision of the case. It is also for the Court to also consider any objection raised by the prosecution about the summoning of the documents. In case the Court finds that the application is vague

or has been moved with the ulterior motive of prolonging the trial, it should reject the application. Ultimately, the Court must perform the balancing act between the Interest of the individual and of the society.”

In view of the above, having recourse to ***Dhananjay Kumar Singh's case (supra)*** and taking into consideration the provision of Section 91 Cr.PC, the present petition is disposed of with a direction that at the time of framing of charge, the trial Court shall require to take into consideration the statement of witnesses collected during the course of enquiry and for that, the prosecution shall produce the statement of witnesses at the time of consideration of charge.

February 16, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE