

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-10135 of 2017

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Date of decision:12.10.2017

Vijay Kumar Malhotra

.....Petitioner

v.

Sukhchain Singh and others

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Sarabjit Singh, Advocate for the petitioner.

Mr. Rahul Bhargava, Advocate for respondents No.1, 2 and 4.

Ms. Arti Kaur, Advocates for respondents No.3, 5 and 6.

Ms. Simranjeet Kaur, Assistant Advocate General, Punjab
for the respondent No.7-State.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the order dated 29.4.2016 (Annexure-P.2) passed by learned Judicial Magistrate Ist Class, Amritsar as well as the judgment dated 15.2.2017 (Annexure-P.4) passed by learned Additional Sessions Judge, Amritsar, vide which the application filed under Section 311 Cr.P.C. has been partly allowed, however, the application qua the examination of witness at Serial No.2(iv) was declined.

Notice of motion has been issued in this case.

Mr. Rahul Bhargava, learned Advocate has put in appearance

on behalf of respondents No.1, 2 and 4; Ms. Arti Kaur, learned Advocates has appeared for respondents No.3, 5 and 6 and Ms. Simranjeet Kaur, learned Assistant Advocate General, Punjab has appeared for the respondent No.7-State and contested this petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that the impugned order dated 29.4.2016 (Annexure-P.2) passed by the learned Judicial Magistrate Ist Class, Amritsar, on application filed under Section 311 Cr.P.C. is an interlocutory order and no revision petition is maintainable. Otherwise also, in the present case, as revision petition has been dismissed, therefore, the proceedings of the revisional Court have no effect on the case. Now the order passed on application filed under Section 311 Cr.P.C. by the learned Judicial Magistrate Ist Class, Amritsar, has been challenged before this Court

A perusal of the record shows that in the preset case an application was filed under Section 311 Cr.P.C. by the prosecution for summoning the witnesses named in the application. The learned Judicial Magistrate Ist Class, Amritsar, vide order dated 29.4.2016 allowed the application partly to summon the concerned Clerk of Sub Registrar regarding sale deed dated 23.2.2006 and sale deed dated 9.11.2001 and concerned Clerk from the office of Income Tax Department regarding the returns of Vijay Kumar Malhotra and Ram Lubaya for the years 2005-2006 and 2006-2007, Stamp vendor regarding the stamp paper register dated

21.10.2005 to 25.10.2005 being the material witnesses for the purpose of proving on record the documentary evidence. The trial Court further declined to summon the Hand-writing Expert to compare the signatures on the agreement to sell as argued. The accused having challenged the order regarding summoning of these witnesses i.e. Clerk of Sub Registrar, Clerk of the Income Tax Department and qua stamp vendor.

At the time of arguments, the learned counsel for the petitioner-complainant argued that the Hand-writing Expert is also a material witness for determination of the dispute between the parties regarding signatures on the agreement. The agreement to sell has already been proved as argued counsel for the petitioner. A perusal of the record shows that the learned Judicial Magistrate Ist Class, Amritsar, has dismissed the application qua Anil Kumar Gupta Hand-writing Expert on the ground that in the event of doing so there would start re-investigation of the case which is not permissible in law. In my view, in no way, when the other witnesses are being allowed to be examined by the learned Judicial Magistrate Ist Class, even if this witness is examined, it would not amount to re-investigation of the case. For accepting the application, the Court is only to see whether it is necessary evidence or not. The Court has nowhere stated that the examination of Anil Kumar Gupta, Hand-writing Expert is not necessary/material evidence.

Therefore, from the above, I find merit in the present petition and the same is allowed. Anil Kumar Gupta, Hand-writing Expert is allowed to be examined by the prosecution.

However, it is made clear that only two effective opportunities will be given for examination by the trial Court qua this witness.

October 12, 2017.

(Inderjit Singh)
Judge

hsp

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