

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

CRM-M-14143 of 2014

Date of Decision: 25th October, 2017

Tejinder Singh

...Petitioner

Versus

Lakhvinder Kaur

...Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Mohit Jaggi, Advocate
for the petitioner.

Ms. Ekta Thakur, Advocate
for the respondent.

FATEH DEEP SINGH, J.

Through this invocation with the aid of Section 482 Cr.P.C the petitioner-Tejinder Singh has sought setting aside/quashment of orders dated 18.03.2014 (Annexure P/9), whereby, the prosecution evidence of the petitioner/complainant was closed by orders; orders dated 24.03.2014 (Annexure P/10) through which application moved by the complainant/petitioner under Section 311 Cr.P.C for leading additional evidence stood dismissed and finally order dated 07.04.2014 (Annexure P/11) by virtue of which learned Additional Sessions Judge, Chandigarh dismissed the revision petition of the petitioner.

After hearing learned counsel for the parties and perusing the records of the case. Before venturing into the relative merits of the case of each of the sides, it is essential to dig deep into the factual background of what led to this imbroglio. Admittedly, as is the case of the two sides, Tejinder Singh/petitioner and respondent/Lakhvinder Kaur entered into a wedlock on 11.4.1999 and cohabited as husband and wife out

of which son namely Harshdeep Singh was born which admittedly is in the custody of the wife. A matrimonial dispute arose between the couple leading to multiplicity of litigation between them including a petition for divorce sought by the husband for dissolution of marriage by a decree of divorce and on the other hand the wife lodged an FIR bearing No.60 dated 11.03.2002 under Sections 406 and 498-A IPC with Police Station, Sector 34 Chandigarh against the husband, who stood convicted by virtue of judgment dated 05.06.2009 of the Court of Judicial Magistrate 1st Class, Chandigarh against which husband preferred an appeal and the Court of learned Additional Sessions Judge, Chandigarh through judgment dated 01.09.2011 has allowed the appeal, thereby, setting aside order of sentence and judgment of conviction against the husband. It is in the background of this, the husband has chosen another recourse as an element of one upmanship against the wife by lodging an FIR No.75 under Sections 464,467,468, 120-B, 420, 177,191 and 506 IPC pertaining to Police Station, Sector 34 Chandigarh. It is during the course of trial in the said case the impugned orders Annexures P/9 to P/11 have come about leading to filing of the present petition.

It is the contention of the learned counsel for the petitioner that without resorting to coercive means the trial Court has closed the evidence of the prosecution suddenly without any reasonable cause and which has been opposed tooth and nail by the learned counsel for the respondent.

Appreciating this aspect of the matter, the impugned order Annexure P/9 is in itself suggestive that the prosecution has availed of

23 effective opportunities including the last two opportunities to conclude its evidence but had failed to conclude the same. It is apparent from the records that the trial Court has even used coercive means to bring about the witnesses by issuing bailable warrants so on and so forth but in spite of the same, the prosecution failed to lead evidence leading to grant of last opportunity on 20.03.2013 and even, thereafter, service was ordered to be effected through Senior Superintendent of Police, Chandigarh and number of opportunities were afforded including last opportunity and the Court had made it clear that no further opportunity shall be granted leading to the closer of prosecution evidence by orders.

Learned counsel for the petitioner could not satisfy this Court how there has been prejudice caused to the petitioner by such an order when it is by his own act and conduct the prosecution has failed to complete its evidence and the matter pertained to year 2007 further aggravates the scenario how justice is being delayed by such a casual approach. Learned counsel for the petitioner could not convince how there has been miscarriage of justice necessitating intervention of this Court by exercising its inherent powers to undo the same and there appears to be no semblance of any reasons to bring the case of the petitioner qua this order under any of the reasons for invocation of inherent powers in furtherance of justice. Thus, this relief, whereby, the petitioner has sought setting aside the order dated 18.03.2014 (Annexure P/9) is certainly ill founded and needs to be dismissed.

The second leg of submissions revolves around denial of opportunity to lead additional evidence by virtue of Section 311 Cr.P.C.

The very wording of the provisions made it emphatically clear that it is only where the Courts deem it expedient in the interest of justice that certain piece of evidence be it oral or documentary necessary to advance the cause of justice to assist in coming to a judicious decision it may so resort to such powers under Section 311 Cr.P.C. The prayer made in the application moved by the applicant/petitioner from the prosecution side had sought to prove copy of order passed in petition under Section 13 of the Hindu Marriage Act, copy of statement of one Swapan Garg, Notary, Copy of statement of accused Lakhvinder Kaur dated 12.4.2004 (sic) on the ground that they were essential to come to a judicious decision. Apparently as is there in the submission of the learned counsel for the respondent which could not be refuted by learned counsel for the petitioner the allegations by the husband levelled against the wife are that the wife in connivance with her close relations managed to procure a passport fraudulently by misrepresentation and forgery in the name of their minor son Harshdeep Singh and claiming that the wife has impersonated him with the help of her co-accused as she wants to migrate abroad. To the very specific query of this Court, learned counsel for the petitioner could not convince by what means or manner these documents so sought to be adduced by way of additional evidence and that too at such a belated stage when the petitioner admittedly was aware of the same and had in his possession these documents neither produced it before the Investigating Officer to form part of the report under Section 173 Cr.P.C nor felt it necessary to bring about the same during the recording of the prosecution evidence and rather to undo the effects of orders Annexure P/9, whereby, evidence of the

prosecution had been closed by orders has tried to circumvent the due process of law apparently by resorting to provisions of Section 311 Cr.P.C . Though, the Court is vested with immense powers under Section 311 Cr.P.C to summon any person as a witness or examine any evidence if it deems necessary to advance the cause of justice and if it appears to the Court to be essential for the just decision of the Court. The Court below in the impugned findings Annexure P/10 has taken cognizance of this fact and has categorically remarked that from the perusal of the application nothing is made out that these documents are relevant for proper adjudication as these documents pertain to matrimonial dispute between the couple which is admitted and has nothing to do with the present allegations which harbour around forgery and impersonation. Rather to the mind of this Court is a devise, a way to undo the effects of orders Annexure P/9. Thus, there appears to be no illegality or perversity in the order Annexure P/10 which needs to be upheld. The residuals of the arguments that the learned Additional Sessions Judge, Chandigarh in the impugned order Annexure P/11 has held that revision against the order passed under Section 311 Cr.P.C did not lie being interlocutory order certainly to the mind of this Court is unfounded, illegal and perverse as has been laid down in ratio ***Uppal Credit and Investment Pvt. Ltd vs. Ashwani Kumar 2016(2) RCR (Criminal) 684*** such an order which causes prejudice to the case of the parties cannot be termed to be an interlocutory order and rather falls under the definition of intermediatory order regarding which as has been laid down in *Uppal Credit* case supra, a revision certainly lies. Since this Court has already adjudicated upon the very legality of the order passed in the

application under Section 311 Cr.P.C thus, no further disposition needs to be made on Annexure P/11 as the same has become otiose at this juncture.

In the light of what has been detailed and discussed above, the present petition is certainly ill founded not only misjoinder of the different recourses which are available to the petitioner under the different provisions of law but is also without any merits and as such stands dismissed.

Records of the trial Court be sent back immediately.

Trial Court to proceed ahead into the matter as per law.

(FATEH DEEP SINGH)
JUDGE

25th October, 2017

aarti

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No