

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

CRM-M-14234-2017 (O&M)

Date of Decision: 27.04.2017

Megh Raj

--Petitioner

Versus

Sauni Ram & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Harshit Jain, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

The instant petition has been filed under Section 482 Cr.P.C. assailing the order dated 06.03.2017 (Annexure P-3) passed by learned Sub Divisional Judicial Magistrate, Sunam and in terms of which an application moved by the petitioner under Section 311 Cr.P.C. to produce certified copies of the partnership deed as well as affidavit dated 31.08.2007 and to examine the witnesses thereof, namely, Hari Chand and Sham Lal has been dismissed.

Counsel would submit that the petitioner has filed a criminal complaint bearing No.57 dated 24.08.2011 titled as 'Megh Raj Versus Soni Ram etc.' against the respondents under Sections 406/465/467/471/506/120-B IPC and under the provisions of the Arms Act. It is asserted that a civil dispute is also going on between the parties. An application dated 20.09.2016 had been moved before the trial Court to prove the documents in question which are already on the judicial file of the Court in the other case of civil nature pending between the parties. As per counsel, the allegations in the complaint are that respondent No.1 herein had sold excess share of

land to respondent No.3 despite the fact that he was owner of a lesser share and as such, to prove such fact, the partnership deed is required.

Counsel argues that the power under Section 311 Cr.P.C. is a vast one and the same can be exercised at any stage of the trial. Counsel contends that the impugned order cannot sustain as the Court is under a bounden duty to allow the application as the same would have been essential for a just decision of the case.

Counsel for the petitioner has been heard at length and the case paper book has been perused.

It is not in dispute that the accused party have raised an objection with regard to partnership deed of M/s Radha Swami Rice Mills as also the affidavit dated 31.08.2007 at the stage of cross-examination of the complainant and have raised a question regarding the admissibility of such documents. In the reply filed to the application moved by the petitioner under Section 311 Cr.P.C., it was specifically averred that the complainant/petitioner herein has not produced the original documents on file. Photostat copies are inadmissible in evidence and the same cannot be proved by any witness without production of the original documents. Further objection was taken that neither the witnesses now sought to be examined were mentioned in the list of witnesses attached with the complaint and nor were they examined by the complainant in his preliminary evidence and at the pre-charge evidence stage. The application was opposed and reply was filed by contending that the complainant was very well in the knowledge of the alleged documents from the very inception and as such he should have produced and proved the alleged documents in his preliminary evidence.

Perusal of the impugned order would reveal that the application

under Section 311 Cr.P.C. moved by the petitioner has been declined by observing that even though the complainant has relied upon the documents and produced photographs thereof as Ex.C4 and Ex.C8 but he had not examined the witnesses of these documents to prove the execution.

Section 311 Cr.P.C. reads as under:

“311. Power to summon material witness, or examine person present. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

It is by now well settled that even though Section 311 Cr.P.C. confers a vast discretion upon the Court and the provision is couched in the widest possible terms but such discretionary power can be invoked only for the ends of justice. The power conferred under Section 311 Cr.P.C. is to be exercised judicially, for reasons duly recorded and not arbitrarily or capriciously.

In the considered view of this Court, the application under Section 311 Cr.P.C. has been rightfully declined by placing reliance upon the judgment of this Court titled as **Varun Enterprises Vs. Sunita Punia and another, 2016 (1) NIJ 57** and wherein it was held that the application under Section 311 Cr.P.C. cannot be allowed just to fill up the lacuna in the case and at the stage where the petitioner wants to reopen the entire case and when the complainant was already put to cross-examination and the defence of the accused already stood unfolded.

The impugned order has been passed by recording reasons that are cogent and valid.

No interference in the same is called for.

Petition is dismissed.

27.04.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |