

CRM-M- 1545 of 2016(O&M)

In the High Court of Punjab and Haryana at Chandigarh

CRM-M- 1545 of 2016(O&M)

Date of Decision:6.4.2017

Manisha Sharma

---Petitioner

vs.

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr.I.S.Pabla, Advocate
for the petitioner
Mr. Vikas Malik, DAG, Haryana
Mr. S.S.Dinarpur, Advocate
for respondent No. 2

Rekha Mittal, J.

The present petition directs challenge against order dated 15.12.2015 passed by the Additional Sessions Judge-cum-Judge Special Court for Heinous Crime against Women, Hisar whereby the application filed under Section 311 of the Code of Criminal Procedure (in short “the Code”) for submission of documents (Annexure P-2) was ordered to be dismissed.

Counsel for the petitioner has submitted that the petitioner submitted complaint dated 24.7.2014 to the Superintendent of Police, Hisar giving detailed account of accusations against respondent No. 2 and the same was marked for urgent action to police station, Agroha. Later, the victim (petitioner herein) was asked to write a complaint but she was not permitted to give a detailed account as narrated in the application dated 24.7.2014 and on the basis of the written complaint/application submitted later, FIR No. 250 dated 24.7.2014 for offence punishable under Sections

354, 342, 328, 384, 506 of the Indian Penal Code (in short “IPC”) was registered at police station, Agroha. It is further argued that initially, the police did not add offence under Section 376 IPC but the same was added later in view of grievance expressed by the complainant and her father. It is vehemently argued that in case the petitioner is not permitted to produce certified copy of complaint dated 24.7.2014 bearing diary No. 4516-PU, a serious prejudice would be caused in just decision of the proceedings which are still pending for recording evidence of the prosecution. It is prayed that the impugned order may be set aside and the petitioner/complainant may be permitted to produce certified copy of complaint dated 24.7.2014, mentioned at Sr.No. IV of para 2 of the application (Annexure P-2). In support of his contention, he has relied upon judgment of this Court ***Pritam Singh vs. State of Punjab 2002(3) RCR(Criminal) 767*** to contend that even the documentary evidence can be allowed to be produced in exercise of jurisdiction under Section 311 of the Code.

Counsel for respondent No. 2/accused has submitted that application (Annexure P-2) is too vague and sketchy because nothing has been mentioned as to how production of the documents referred to in para 2 is necessary for just decision of the case when otherwise the documents are not per se admissible in evidence. It is further argued that FIR No. 250 dated 24.7.2014 was registered on the basis of a written complaint in handwriting of the petitioner with her signatures. The petitioner was produced before the Illaqa Magistrate and she recorded a statement under Section 164 of the Code. No such plea has been raised by the petitioner that either her statement under Section 164 of the Code was not correctly

recorded or she was not permitted to give a detailed account of the occurrence in regard whereof her statement under Section 164 of the Code was recorded. The last submission made by counsel is that the application has been filed by Laxmi Narayan, father of the alleged victim in order to delay the proceedings and prolong agony of the respondent though it needs to be examined if he has locus to file such an application.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

Before advertng to the submissions made by counsel for the parties, it is appropriate to reproduce a relevant extract from the order passed by the trial court:-

“Coming to the facts of case in hand, from the application itself, it is evident that there is nothing pleaded as to what is the relevancy of these documents which applicant want to place on record. Moreover, production of document before the investigating agency is also not specified in the application rather it is claimed that investigating agency had not received these documents. There is nothing on record which would reveal that these documents are necessary for adjudication of the present matter. Moreover, Section 311 of the Code of Criminal Procedure provides for calling witnesses and nor for production of documents. Therefore, on all counts, there is no merit in the application and by virtue of this application, applicant

cannot be permitted to fill up lacunae of the case.”

This Court, on January 15, 2016 issued notice of motion limited to prayer of the petitioner qua document namely complaint No. 4516-PU dated 24.7.2014 given in the office of the Superintendent of Police, Hisar.

Perusal of the application would reveal that in para 2 of the application, it is mentioned that the applicant wants to submit the following documents before the Court as evidence. In the said para, prayer clause reads as follows:-

“.....prayed that the above mentioned documents had not required by the investigating agency during investigation and many times the applicant along with all documents approached to investigating agency, but the investigating agency had not received all these documents from the applicant and permission may kindly be granted to the applicant in respect of all these documents for tender in evidence in the interest of justice.”

First of all, this application appears to have been filed by Laxmi Narayan through some counsel. Counsel for the petitioner has failed to advance any arguments much less convincing as to locus standi of Sh. Laxmi Narayan to file such an application when admittedly the proceedings on behalf of the State of Haryana are being conducted by a public prosecutor. This apart, Laxmi Narayan is not even the complainant in the case. The application is altogether silent with regard to the pleas which

have been sought to be raised by counsel for the petitioner before this Court. Nothing has been mentioned in the application as to how the documents referred to in the application are essential for just decision of the case. Even otherwise, copy of complaint dated 24.7.2014 is neither per se admissible nor a substantive piece of evidence because the same, at best, would be a previous statement of the author of the application. Counsel for the petitioner has further failed to make any submissions as to how this document dated 24.7.2014 can be allowed to be tendered into evidence without examining a witness, in accordance with law.

So far as plea of the petitioner that even the documentary evidence can be allowed to be produced in exercise of jurisdiction under Section 311 of the Code, the contention gets substantiated from the judgment of this court in *Pritam Singh's case (supra)* but even in the said authority, it has been held that provisions of Section 311 of the Code have given power to the Court to allow production of evidence whether documentary or oral which is per se admissible without formal proof where the court feels the same to be necessary for just decision of the case.

Analyzed from any angle, I do not find any merit in the contention of the petitioner. For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

6.4.2017
paramjit

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