

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

CRM-M-26534-2017(O&M)

Date of decision:29.11.2017

Ahmed Hussain

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashish Gupta, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 18.04.2017 passed by the trial Court allowing the application under Section 311 Cr.P.C. as well as the order dated 18.05.2017 passed by the revisional Court, dismissing the revision filed by the petitioner.

The respondent-State has filed an application under Section 311 Cr.P.C. for re-summoning PW-5 Kamruddin Patwari as it was stated in the application (Annexure P-2), dated 30.03.2017 that this witness was examined on 03.06.2016 but inadvertently, he could not exhibit a Jamabandi for the year 2003-04 and his report, which are already on the trial Court file. It was also stated that it is necessary to exhibit these two documents to meet the ends of justice and for just and proper decision of the case.

The petitioner-accused filed a reply and contested the application on the ground that the application has been moved after closing of the prosecution evidence by the trial Court on 26.07.2016.

The trial Court vide its order dated 18.04.2017, allowed the application holding that when PW-5 Kamruddin Patwari appeared in the witness box and he has proved the Jamabandi for the year 2006-07, which

was filed at the time of furnishing of bail bonds and in this Jamabandi, the land is recorded in the name of Khalil Ahmed and the particulars of this land do not match with the land alleged to be mortgaged by Ahmed Hussain with the Bank and thus, inadvertently, the said Jamabandi has been exhibited as PW5/A. It is also observed in the order that exhibited document was not signed by the Presiding Officer and therefore, this fact could not be noticed by her. Therefore, the application under Section 311 Cr.P.C. was allowed holding that the powers can be exercised by the Court at any stage of the trial for the purpose of just decision of the case.

The petitioner filed a revision before the revisional Court and the same was also dismissed by passing the following order:-

“7. After bestowing thoughtful consideration to the arguments so advanced by both the parties, this court does not find any impropriety and illegality in the order passed by learned trial court. In this case the allegations against the accused are that the accused obtained vehicle loan from Gurgaon Gramin Bank, Nuh after submitting fake and forged documents and to prove its case the prosecution examined Kamruddin Halqua Patwari as PW5 and he proved the copy of jamabandi for the year 2006-2007 of village Jakhopur as Ex.PW5/1 which was alleged to be issued by him and by way of application under section 311 Cr.P.C. prosecution sought to prove jamabandi for the year 2003-2004 and application under section 311 of Cr.P.C. has been allowed by learned trial Court and feeling aggrieved the accused has filed this revision alleging that learned trial Court has committed error in allowing this application as after examining prosecution witnesses, the evidence was closed by the Court vide order dated 26.7.2016 as the list of witnesses was exhausted on 17.3.2017 and thereafter, final arguments were heard and the case was fixed for orders. According to revisionist, jamabandi

for the year 2003- 2004 is not the part and parcel of the challan and this document has not been mentioned in the complaint, therefore, the same is not admissible in evidence and application has been filed just to fill up the lacuna in the case, so application under section 311 of Cr.P.C. should have been dismissed and learned trial Court had committed grave illegality in allowing the application but after perusal of the case file this Court does not find any illegality in the order passed by the learned trial Court.

8. *Perusal of the testimony of PW5 would show that jamabandi for the year 2006-2007 was got proved by PW5 as Ex.PW5/1 whereas this jamabandi was furnished by surety Makbul Ahmed of accused while furnishing bail bonds as surety and there is no dispute regarding genuineness of this property. The dispute in this case is that accused obtained loan from Gurgaon Gramin Bank after tendering fake jamabandi for the year 2003-2004 and prosecution wants to prove jamabandi for the year 2003-2004 of village Kherla wherein accused Ahmed Hussain has been shown as owner and the same is very much part and parcel of the case file as it must have been taken into possession by the police while collecting document from Gurgaon Gram Bank and prosecution wants to prove this document since the prosecution claim is that jamabandi for the year 2003-2004 is a forged document, so, this document is required to be proved as per law and since document jamabandi for the year 2003-2004 is a material piece of evidence and is necessary for just decision of the case, so, it is required to be proved and learned trial Court has rightly allowed the application of prosecution.*

9. *Furthermore, the document jamabandi for the year 2003-2004 is part and parcel of the challan as is evident from the challan wherein this document is part of recovery memo of loan file of accused Ahmed Hussain and is duly signed by Senior Branch Manager, Gurgaon Gramin Bank.*

10. *So far as plea of revisionist is concerned that this*

application has been moved by prosecution to fill up the lacuna in the case and this application has been moved at the stage when the case was fixed for orders is of no help to the case of the revisionist as section 311 of Cr.P.C. empowers the Court to summon any person as a witness at any stage of trial or to recall/reexamine any person already examined if his evidence appears to the Court to be essential to the just decision of the case. So before pronouncement of judgment any witness can be recalled. Learned trial Court has rightly recalled PW5 Kamruddin Patwari to prove jamabandi for the year 2003-2004 who inadvertently proved jamabandi for the year 2006-2007 of village Jakhopur.

11. *As held in the case of **Nirmal Singh & Ors. versus Siri Ram 1988 (1) C.L.R. 691 (P&H)**, this Court can interfere with the impugned order of the Magistrate only if it is manifestly illegal, unjust or perverse and that this Court cannot set aside the impugned order merely because a different view than what the learned Magistrate had taken is possible on the basis of evidence available. Interference with the impugned order is permissible only if it is patently illegal and suffers from perversity. In view of law laid down in **Nirmal Singh & Ors. versus Siri Ram (supra)**, this court does not find any illegality, impropriety and incorrectness in the impugned order. Accordingly, the impugned order does not call for interference under revisional jurisdiction of this court. So, the revision petition fails and same is hereby dismissed. Record of lower court be sent back with a copy of this judgment. The present revision petition file be consigned to record room after compliance.”*

It is submitted on behalf of the petitioner that the application has been moved after closing of the prosecution evidence just to fill up the lacuna and this Jamabandi was not part of the record and the same does not find mentioned in the complaint.

However, learned counsel for the petitioner has admitted that in pursuance to the impugned orders, the statement of PW-5 has already been re-recorded and the Jamabandi has already been marked as Mark-A.

After hearing learned counsel for the petitioner, I find no ground to interfere in the impugned orders. The witness PW-5, as a Patwari appeared for proving the relevant revenue documents i.e. Jamabandi for the year 2003-04. However, inadvertently, the Jamabandi which was exhibited by him was a different jamabandi produced on record along with the bail bonds by a surety. Therefore, there was an apparent mistake on record. Both the Courts have run currently held that when this document was exhibited, it was not even signed by the Presiding Officer and therefore it is the state who brought this fact to the notice of the Court.

In view of the above, I find no illegality in the impugned orders passed by the Courts below allowing the application under Section 311 Cr.P.C.

No merit. Dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

29.11.2017

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No