

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

**CRM-M No.28002 of 2017
Date of Decision : 02.08.2017**

Jaspal Singh

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Amardeep S. Gill, Advocate
for the petitioner.

SUDIP AHLUWALIA, J. (ORAL)

This petition is directed against the order dated 13th June, 2017 passed by the Ld. Judicial Magistrate 1st Class, Jalandhar in case FIR No.133 dated 20th October, 2010, under Sections 465, 466, 467, 468, 471, 120-B of IPC, registered at Police Station New Baradari, District Jalandhar.

By the impugned order, the Ld. Court below had rejected an application filed on behalf of the petitioner/accused under Section 173(5) Cr.P.C. in which a prayer had been made to drop the proceedings on the ground that copies of the statements of witnesses under Section 161 Cr.P.C. were not attached with the final report under Section 173(2) Cr.P.C. nor such copies were supplied to the accused under Section 207 Cr.P.C.

The Ld. Court below in rejecting the application observed *inter alia*, ;

“The examination of witness under Section 161 Cr.P.C. may be oral and under Section 161(3) Cr.P.C. police officer may reduce the same into writing.

Therefore, it cannot be said that the challan is incomplete. The report under Section 173(2) Cr.P.C. specifically bears mention that the statement under Section 161 Cr.P.C. is not attached with the challan meaning thereby that there is no such statement so recorded by the investigating officer in writing. Hence, present application under Section 173(5) Cr.P.C. is dismissed.”

It, thus, transpires that the observation of the Ld. Trial Court was that no statements under Section 161 Cr.P.C. had been recorded by the Investigating Officer, on account of which there was no question of supplying any copies to the accused.

Ld. Counsel for the petitioner has contended before this Court that the valuable right of the accused to contradict the witnesses cited in the case *viz-a-viz* their previous statements under Section 161 Cr.P.C. would be violated/vitiated, in case, the witnesses are not confronted with their previous statements before the Investigating Officer.

The Court finds little merit in this submission. This is so, because Section 161 Cr.P.C. specifically provides;

“161. Examination of witnesses by police.

*(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, **may examine** orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a

tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.”

(Emphasis added)

From the highlighted extract in the aforesaid provision of Criminal Procedure Code, it is seen that there is no express obligation upon the Investigating Officer to necessarily record the statement of any witness. Furthermore, it needs to be remembered that in this case, the FIR was drawn up on the basis of the complaint made by the Presiding Officer of a Court in exercise of the powers under Section 340 Cr.P.C. for alleged commission of the offences during some judicial proceeding. All the persons cited as witnesses in the challan, who have been listed in Annexure P-3, are seen to be official witnesses, starting from the complainant-Smt. Ravinder Kaur herself, who are essentially required to lead evidence basically on the basis of existing official records, and apparently not by virtue of any personal knowledge.

For this reason, this Court finds no infirmity in the impugned order passed by the Ld. Trial Court.

Accordingly, this petition stands dismissed.

(SUDIP AHLUWALIA)
JUDGE

August 02, 2017
Dpr

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