

117.

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

CRM-M-29596-2016 (O&M)

Date of decision:28.09.2017.

RANBIR SINGH DESWAL

... Petitioner

Versus

ANIL ARORA AND ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Parminder Singh, Advocate,
for the petitioner.

Mr. Rakesh Gupta, Advocate,
for respondent No.1.

Mr. Sandeep Vashisht, DAG, Haryana,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for quashing the order dated 04.07.2016 (Annexure P-5) whereby the trial Court has dismissed the application filed by the petitioner to lead additional evidence.

Briefly stated, the petitioner-complainant had filed a complaint against the respondent-accused under Sections 500, 501 and 502 IPC in the Court of Chief Judicial Magistrate, Karnal. As per the complaint, the petitioner, who is working in Haryana State Electricity Board and was posted at Karnal as SDO (Current Duty Charge of Assistant Engineer), the respondent-accused being Editor, Printer,

Publisher and owner of fortnightly newspaper “Akaraman Chakar” made publications in the fortnightly issues i.e. 16.11.2011 to 30.11.2011, 01.12.2011 to 15.12.2011 and 16.01.2012 to 31.01.2012 with a mala fide intention so as to harass, humiliate and degrade the petitioner in the estimation and eyes of general public, his relatives, family members, departmental officials and officers. In the newspaper issue of 01.12.2011 to 15.12.2011, the accused had published a news on front page of the above said newspaper with the wordings “*Bijli Board City Sub Division SDO, J.E. Dwara Bhrashtachar Pe Bhashatachar*”. Such publication was also made in various other fortnightly publications.

In the criminal complaint, while the petitioner has concluded his evidence and the case was fixed for the defence evidence, the respondent appeared as a defence witness wherein he has brought on record certain complaints against the petitioner which has necessitated the petitioner-complainant to rebut, as in those complaints, enquiry has been conducted by the authorities. Therefore, the petitioner-complainant wanted to place on record the enquiry report in the complaints as cited by the respondent-accused.

Accordingly, the petitioner had submitted an application under Section 311 Cr.P.C. so as to produce additional evidence which is certified copy of the enquiry conducted against the petitioner-complainant by the department and concerned authorities. The complainant has no other provision to disprove those complaints filed

by the respondent, except to produce the finding of the concerned authority by way of additional evidence.

The said application was dismissed by the learned Magistrate vide impugned order dated 04.07.2016 primarily on the ground that the factum of enquiry report was already within the knowledge of the complainant and the application under Section 311 Cr.P.C. has been filed after an inordinate delay.

Learned counsel for the petitioner has argued that even if the said report was within the knowledge of the petitioner, the necessity for filing the same by way of additional evidence has arisen because of the reference/production made by the respondent-accused in their evidence and no prejudice is going to be caused to the respondent if inquiry report is placed by way of application under Section 311 Cr.P.C. as additional evidence. He further states that the allegation that the petitioner is causing delay, cannot be accepted when the complaint has been filed by the petitioner-complainant himself.

On the other hand, learned counsel for the respondent No.1 has argued that once it is established that the very factum of report was already within the knowledge of the petitioner, there is no illegality in the order dated 04.07.2016 passed by learned Magistrate. Even otherwise, the petitioner wants to delay the proceedings and to fill up the lacuna to cover up his case by filing the present application.

I have heard learned counsel for the parties.

So far as the provision of Section 311 Cr.P.C. for leading additional evidence is concerned, the same is reproduced 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.”

The very spirit of the above Section 311 Cr.P.C. shows that its provisions are to be liberally interpreted. The judgment passed in

Rajaram Prasad Yadav Versus State of Bihar and another-2013 (3)

R.C.R. (Criminal) 726 has defined the power vested with the courts, so as to invoke Section 311 Cr.P.C. for summoning a witness or to recall any witness already examined to lead additional evidence. There is no dispute that the necessity for filing application under Section 311 Cr.P.C. for leading additional evidence has arisen for the reason that the respondent-accused in his evidence has made a reference to certain complaints and it is in response to those complaints, the petitioner intends to refer to the outcome of those complaints i.e. the report on these complaints. Therefore, the allegation that the petitioner was already in the knowledge of those reports, cannot be accepted as it is only in reference to the complaints referred in the evidence by the respondent-accused, the petitioner is required to make an application under Section 311 Cr.P.C to lead additional evidence. Therefore, this

Court finds that the order dated 04.07.2016 (Annexure P-5) passed by

learned Judicial Magistrate Ist Class, Karnal, deserves to be set aside and the petitioner is required to be given one opportunity to lead additional evidence, so as to bring on record the copy of the inquiry report which is otherwise the culmination of the complaints as referred by the respondents in their evidence.

In view of above, present petition is allowed. The order dated 04.07.2016 (Annexure P-5) passed by learned Judicial Magistrate Ist Class, Karnal, is set aside. The petitioner is granted one opportunity to lead additional evidence, so as to bring on record the copy of the enquiry report conducted against him.

It is made clear that the petitioner shall be allowed only one opportunity to lead additional evidence and the same shall be restricted only to the report and no other document shall be allowed to be tendered in additional evidence. Since the petitioner is being allowed to lead additional evidence, the respondent shall have also a right to rebut such evidence in accordance with law and in case, need be, one opportunity shall be granted.

(HARI PAL VERMA)
JUDGE

28.09.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No