

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

CRM No.M-30739 of 2016 (O&M)

Date of Decision: May 23, 2017

Avtar Singh

...Petitioner

VERSUS

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gurinder Singh Dhillon, Advocate,
for the petitioner.

Mr.V.P.S.Sidhu, Asstt. Advocate General, Punjab
for the respondent-State.

Mr.Rajiv Vij, Advocate
for respondent No.2.

INDERJIT SINGH, J.

The petitioner has filed this petition under Section 482 Cr.P.C. against respondents State of Punjab and Gurdeep Kaur @ Deepi for quashing the order dated 16.08.2016 passed by learned Addl. Sessions Judge, Rupnagar, whereby the applications filed on behalf of the complainant through State under Section 311 Cr.P.C. in case FIR No.58 dated 22.05.2014 under Sections 302, 201 and 34 IPC registered at Police Station Singh Bhagwantpura, District Rupnagar, have been dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondent No.2 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that learned Addl. Sessions Judge, Rupnagar, vide order dated 16.08.2016, dismissed the applications filed under Section 311 Cr.P.C. The application dated 17.03.2016 under Section 311 Cr.P.C. was filed for giving directions to the Nodal Officer for preserving call details, tower location and ownership, IP of mobile No.81949-59911 of Idea and 96530-00111 of Videocon for the period from January 2014 to December 2014 and also to bring their usage of facebook, whatsapp and SMS and application dated 11.08.2016 under Section 311 Cr.P.C. for summoning Nodal Officer of Idea along with call details and other record. Learned Addl. Sessions Judge, Rupnagar, after considering the facts in detail, dismissed these applications.

From the record, I find that trial is going on for offence under Section 302, 201 and 34 IPC. The FIR was got registered by Barinder Singh. Gurdeep Kaur is the accused, who is wife of Ravinder Singh. Taranbir deceased, was real brother of Ravinder Singh and Gurdeep Kaur is sister-in-law (bhabhi) of Taranbir. Barinder Singh is the brother-in-law (saala) of Taranbir deceased. The motive etc. for the murder, as argued, is stated to be illicit relation of accused Gurdeep Kaur with Taranbir.

Learned Addl. Sessions Judge, Rupnagar, while dismissing the applications, firstly taken Ravinder Singh as complainant, whereas, complainant is Barinder Singh and not Ravinder Singh. If the mobile phone has been handed over by Ravinder Singh, it means it was handed over to the police by the husband of the accused. Therefore, the findings given by learned Addl. Sessions Judge, Rupnagar, are not as per record.

Furthermore, at the time of considering the application under Section 311

Cr.P.C., the Court is to see whether evidence appears to be essential for the just decision of the case. At this stage, the Court is not to minutely look into the evidence collected by the Investigating Officer or to give the findings by discussing all the facts touching to the merits of the case.

Keeping in view the close relation between the deceased and the accused and further the fact that mobile phone is handed over by Ravinder Singh husband of accused to the police, which was taken into police possession vide recovery memo and prosecution further wants to brought on record the call details, ownership record etc. of that mobile phone to connect the link of the accused in the murder, in no way, it can be held that this evidence is not essential for the just decision of the case. It appears that evidence which the prosecution wants to summon i.e. call details, ownership record etc., is essential for the just decision of the case.

In view of the above discussion, I find that the impugned order dated 16.08.2016 passed by learned Addl. Sessions Judge, Rupnagar, is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed. The applications under Section 311 Cr.P.C. are allowed. Learned trial Court is directed to summon the witnesses with the record and to proceed further as per law.

May 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No