

Criminal Misc. M- No. 30059 of 2017 (O&M)

Date of decision : August 21, 2017

Amita Singla

.....Petitioner

Versus

Ravi Bansal and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Tribhawan Singla, Advocate
for the petitioner.

LISA GILL, J.

The petitioner is aggrieved of order dated 01.05.2015 passed by the learned Judicial Magistrate First Class, Nabha (Annexure P-3) whereby her application under Section 311 Cr.P.C. has been rejected. The petitioner further challenges order dated 03.07.2017 passed by the learned Additional Sessions judge, Patiala whereby revision petition preferred by her against order dated 01.05.2015 has been dismissed.

Brief facts of the case are that FIR No. 27 dated 10.03.2010 was lodged under Sections 406, 498A, 506, 120B, 201 IPC at Police Station Kotwali, Nabha at the instance of the petitioner. Charge, in this case, was initially framed on 11.06.2012. Thereafter, additional accused were summoned and amended charge sheet was filed on 17.02.2014.

The petitioner on an earlier occasion through the prosecution moved an application under Section 311 Cr.P.C. for examination of some of the remaining witnesses. Said application was allowed.

Thereafter, another application under Section 311 Cr.P.C. (which has been dismissed vide impugned order) was moved by the petitioner on 29.04.2015 (Annexure P-1). The petitioner seeks to place on

record the attested true copy of statement of the account of Sh. Hem Raj (father of the petitioner). It is averred that this document is material and necessary, therefore, the prosecution seeks to summon the concerned Clerk/official of the concerned Bank to prove the same. The said application was contested. In the reply filed on behalf of the accused, it is mentioned that the petitioner merely seeks to prolong the litigation in one manner or the other. The earlier application under Section 311 Cr.P.C. moved by the petitioner was allowed. The remaining witnesses as per list given by the complainant through the Additional Public Prosecutor, were duly examined. Moreover, Sh. Hem Raj testified before the learned trial Court as PW2. No such document had ever been produced or brought on record at any earlier stage.

Learned trial Court observed that the provisions of Section under Section 311 Cr.P.C. cannot be allowed to fill up the lacunas in the prosecution story. The case was at its penultimate stage and there is no explanation as to why the said witness was not sought to be examined at any earlier point of time. Therefore, the application under Section 311 Cr.P.C. was dismissed vide order dated 01.05.2015.

Learned Additional Sessions Judge, Patiala dismissed the revision petition preferred by the petitioner on 03.07.2017, while upholding the impugned order.

Learned counsel for the petitioner argues that the document in question is very essential to prove the prosecution case in respect to giving of ₹2 lakhs at the time of solemnisation of marriage. Respondent – husband, it is submitted has admitted the receipt of the cheque of Rs. 14 lakhs in the divorce proceedings under the Hindu Marriage Act while appearing as

RW1 as well as in the proceedings under the Protection of Women from Domestic Violence Act. It is further argued that an application under Section 311 Cr.P.C. can be entertained at any stage of trial, in case, it is felt by the Court that the evidence in question is necessary for the just and proper adjudication of the matter. It is, thus, prayed that the impugned orders be set aside and the application under Section 311 Cr.P.C. be allowed.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is not in dispute that FIR in question was registered on 10.03.2010. Amended charge was framed on 17.02.2014. First application under Section 311 Cr.P.C. moved by the petitioner through Additional Public Prosecutor was allowed and the remaining witnesses were ordered to be examined as per the list given by the petitioner. The subsequent application under Section 311 Cr.P.C. moved by the petitioner reads as under:-

- “1) That the above noted case is pending in your Hon'ble Court for today.
- 2) That the prosecution wants to place on record attested true copy of statement of account of Sh. Hem Raj etc. Dulladi Gate, Nabha is enclosed herewith. The said document is material, which necessary to be proved and placed on record for the just decision of the case. The application/prosecution wants to summon the concerned clerk official of bank to prove the record.
- 3) That if the application is allowed, no prejudice is caused to the accused.

It is, therefore, respectfully prayed that the application and the prosecution may kindly be allowed to place and prove the aforesaid statement of account on record as

contemplated as under law by summoning the official of PNB (Main) Branch, Nabha.”

There is not a whisper of an explanation for the reason as to why the petitioner had not placed the said document on record earlier and examined the witness from the Bank as is sought now. The said amount of ₹2 lakhs, it is averred, was paid immediately after her marriage. Therefore, it cannot by any stretch of imagination be presumed that the petitioner was not aware of the said facts. The trial, in this case, is pending since the last seven years. Prosecution evidence has been concluded. Even at the time of arguments before this Court, no explanation, leave alone a plausible one is forthcoming in this respect on behalf of the petitioner.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned orders, which calls for any interference in exercise of powers under Section 482 Cr.P.C..

Accordingly, this petition is dismissed.

August 21, 2017
rts

(Lisa Gill)
Judge

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No