

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

CRM-M-31535 of 2016 (O&M)

Date of decision : 27.03.2017

Mahant Parminder Nand Chela of Saroop Nand

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Ms. Dolly Shiwani, Advocate for
Mr. Mandeep S. Sodhi, Advocate
for the petitioner.

JITENDRA CHAUHAN, J. (Oral)

This petition has been filed under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') for quashing of order dated 04.04.2016, passed by learned Judicial Magistrate 1st Class, Faridkot in FIR No.94 dated 03.05.2013 registered under Sections 420, 465, 467, 468 and 471 IPC, at Police Station City Kotkapura, whereby the application filed under Section 311 Cr.P.C., by the respondent/prosecution was allowed; and the order dated 09.05.2016, passed by learned Addl. Sessions Judge, Faridkot, wherein the revision petition filed by the petitioner against the order dated 04.04.2016 was dismissed.

It is contended that the learned Courts below erred in ignoring the fact that the application in question had been filed to fill up the lacunae in the prosecution case and to delay the conclusion of the matter. Subsequent to this application, respondent has filed another application dated 02.08.2016 for summoning the record of Account Opening Form from OBC Bank, Branch Kotkapura of the petitioner's bank account. Thus, the impugned order and judgment are liable to be set aside.

I have heard the learned counsel and carefully perused the entire record on file.

Hon'ble the Supreme Court, while dealing with the scope of Section 311 Cr.P.C. and the power of the summoning Court, in '**Mannan SK. and others VS. State of West Bengal and another**', 2014(13) SCC 59 has held the following:-

“The aim of every court is to discover truth. Section 311 of the Code is one of many such provisions of the Code which strengthen the arms of a court in its effort to ferret out the truth by procedure sanctioned by law. It is couched in very wide terms. It empowers the court at any stage of any inquiry, trial or other proceedings under the Code to summon any person as a witness or examine any person in attendance, though not summoned as witness or recall and re-examine already examined witness. The second part of the Section uses the word ‘shall’. It says that the court shall summon and examine or recall or re-examine any such person if his evidence appears to it to be essential to the just decision of the case. The words ‘essential to the just decision of the case’ are the key words. The court must form an opinion that for the just decision of the case recall or re-examination of the witness is necessary. Since the power is wide its exercise has to be done with circumspection. It is trite that wider the power greater is the

responsibility on the courts which exercise it. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case. It should not cause prejudice to the accused. It should not permit the prosecution to fill-up the lacuna. Whether recall of a witness 7 is for filling-up of a lacuna or it is for just decision of a case depends on facts and circumstances of each case. In all cases it is likely to be argued that the prosecution is trying to fill-up a lacuna because the line of demarcation is thin. It is for the court to consider all the circumstances and decide whether the prayer for recall is genuine.”

The petitioner has challenged the order dated 04.04.2016 vide which the application filed under Section 311 Cr.P.C. for producing and proving on record the original mortgage deed dated 27.11.2008, affidavit dated 18.09.1997 and for examination of hand writing and finger print expert, by the respondent was allowed and the prosecution was permitted to lead the additional evidence. The only assertion of the petitioner is that to fill up the lacunae, the respondent had moved the said application. However, as per the record the necessity for moving the instant application is for comparing the signature of Sarupa Nand on original disputed Will dated 11.03.2010 executed in favour of the petitioner and standard signatures from original affidavit and agreement. Earlier also, the signature were compared with the photostat copies of these documents. Since the entire prosecution case is based upon documentary evidence, thus the report of the hand writing and finger print expert plays a significant role in arriving at a just conclusion. Therefore, this Court feels that the findings recorded by the Courts below cannot be said to be perverse or illegal.

However, considering the fact that the FIR in question came to be registered on 03.05.2013, the trial Court shall make an endeavor to conclude the trial expeditiously.

Dismissed.

27.03.2017

ashok

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned: Yes / No

Whether reportable: Yes / No