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

CRM-M-41606-2015

Date of decision: 11.01.2017

Arun Goel

....Petitioner

versus

Sandeep Munjal and Another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr.A.S.Virk, Advocate
for the petitioner.

Mr. Saurabh Arora, Advocate
for respondent No.1.

Mr. Manish Bansal, DAG, Haryana.

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DEEPAK SIBAL, J. (Oral)

The present petition filed by the complainant under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') seeks quashing of order dated 08.09.2015 (Annexure-P4) passed by the Additional Chief Judicial Magistrate, Ambala.

Through the impugned order the application filed by the prosecution under Section 311 of the Code seeking permission to exhibit certain original bills by recalling the Investigating Officer for re-examination was rejected. The revision petition filed against the impugned order also met the same fate.

As per the complaint which forms the basis of the FIR *inter alia*, the allegations are that about 7 to 8 months prior to the lodging of the

complaint the accused had come to the shop of the complainant and disclosed his name as Rajat. While projecting himself to be the owner of M/s Punjab Medical Hall, Amritsar, the accused allured the brother of the complainant into selling to him certain medicines, which the complainant later found to be adulterated. For the transactions entered into between the parties the accused had allegedly issued certain bills to the complainant which proved the supply of the aforesaid medicines by the accused to the complainant. It is the case of the complainant that during the course of the investigation the aforesaid bills, in original, were handed over by the complainant to the Investigating Officer, but during the course of the trial inadvertently or otherwise neither these bills, in original were filed with the report under Section 173 of the Code nor exhibited at the time when the Investigating Officer was examined. Before the Investigating Officer could be cross-examined this fact came to the knowledge of the prosecution and an application was moved under Section 311 read with Section 91 of the Code seeking permission of the Court to re-examine the Investigating Officer, so that the aforesaid original bills could be exhibited. It may be noted that the photocopies of the aforesaid bills had already been filed by the prosecution in the Court.

Through the impugned order, the Additional Chief Judicial Magistrate, Ambala rejected the application *inter alia* on the ground that the application had been filed belatedly and was to fill up lacuna in the prosecution's case which was impermissible. The revision petition was preferred by the prosecution against the order of the Magistrate was also dismissed. In the background of the above factual matrix the complainant has filed the present petition.

Sections 311 and 91 of the Code which are relevant read 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.

91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

The case of the prosecution is that the accused had defrauded the complainant by supplying to him spurious medicines. According to the complainant such supply was based on bills issued by the accused which during the course of investigations in original were handed over by the complainant to the Investigating Officer but the same had neither been

appended with the report filed under Section 173 of the Code nor exhibited at the time of examination of the Investigating Officer, though photocopies of these bills were filed.

In my opinion, the bills in original, which are sought to be brought on the record have evidentiary value of import and therefore, need to be exhibited. Photocopies of these bills are already on the judicial record. Therefore, no prejudice would be caused to the accused if the original bills are exhibited during the re-examination of the Investigating Officer. Further, the accused would get an opportunity to cross-examine him.

There was no delay in filing of the application which has been rejected through the impugned order as the same was admittedly filed even before the Investigating Officer have been cross-examined who was said to be in possession of the original bills. Even otherwise a perusal of Section 311 of the Code, as reproduced earlier, shows that the Court has the power to recall and re-examine any person if his evidence appears to be essential to the just decision of the case and that this can be permitted at any stage of the trial.

If the original bills are permitted to be exhibited, the prosecution would not be filling up any lacuna as admittedly the photocopies of these bills were already on the judicial file.

In view of the above the impugned order dated 08.09.2015 passed by the Additional Chief Judicial Magistrate, Ambala, as also the order passed in revision of the aforesaid order are set aside with a direction to the trial Court to recall the Investigating Officer to re-examine him only and solely for the purpose of producing the original bills allegedly which form the basis of supply of medicines by the accused to the complainant. It

is clarified that originals of only those bills would be permitted to be placed on record, photocopies of which are already on the judicial file.

The above direction would be carried out by the trial Court within two weeks from the date of receipt of the certified copy of this order. Needless to add, that on such re-examination of the Investigating Officer, the accused would have a right to cross-examine him in accordance with law.

The petition stands allowed in the above terms.

January 11, 2017

Sunil Devi

(DEEPAK SIBAL)
JUDGE

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