

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 3488 of 2016

Date of Decision: 18.07.2017

Anita Kundu

... Petitioner

VERSUS

State of Haryana

... Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. P.K. Mutneja, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Manish Soni, Advocate
for respondent no.3.

SURINDER GUPTA, J.

This is revision petition against order dated 23.08.2016 passed by Additional Sessions Judge, Gurugram dismissing the application of petitioner under Section 311 Cr.P.C.

Case of prosecution, if brief, is that on 03.11.2014, after receiving information about the murder of a person, the police reached the spot and found that one Virender Kundu had been shot dead in his Fortuner vehicle. As per statement of complainant, her husband had purchased land from Dharamvir and paid him ₹3 lacs. Remaining amount of ₹3 lacs was to be paid on the date of registration of sale deed. Due to rise in price of property, Dharamvir became greedy and did not execute the sale deed, which resulted in quarrel between deceased and Dharamvir, who had given threats to deceased on various occasions. On 03.11.2014 at about 11.30

tailor at Firoz Gandhi Colony, Sector 9, Gurugram and was shot dead on the way.

After presentation of challan, prosecution concluded the evidence and statement of accused under Section 313 Cr.P.C. was recorded. The prosecution moved application under Section 311 Cr.P.C to summon certain witnesses mentioned in para no.6 of the application which reads as under :-

“6. That the prosecution wants to examine noted below witnesses in their evidence, as the same are very essential for the just and proper decision of this case :-

A. ASI Surjeet, Incharge Police Post, Sector 9A, Gurgaon along with Police file of case titled as 'State Versus Neeraj' F.I.R. No. 699/2014 U/s: 302/34 IPC P.S. SEC-19, Gurgaon.

B. Insp/Sho Naresh Yadav, P.S: Sector 10, Gurgaon along with police file of case titled as 'State Versus Neeraj' F.I.R. No. 699/2014U/S: 302/34 IPC P.S: SEC-10, Gurgaon.

C. S.I Karan Singh Number-D2076, Sp.ecial Team/Crime Branch, Delhi along with file of FIR No. 29/2016 U/s: 25/27/54/59 A. Act Crime Branch, Delhi.

D) Insp. Saroj Bala Presently posted at P.S. Sagarpur, Delhi, who was earlier posted as S.I PS Chhawala in FIR No. 247/2014 along with police file.”

The trial court declined the application and this revision petition has been filed by the petitioner against the order of the trial court.

I have heard learned counsel for petitioner and the learned State counsel.

Learned counsel for petitioner has argued that the weapon used to murder husband of complainant was recovered from the accused Neeraj alias Bunty in case bearing FIR No.29 of 2016 registered by the Crime Branch, Delhi for offence under Section 25/27 of Arms Act. By calling the police file, the petitioner wants to prove that the weapon used in this case to murder her husband was recovered from the accused Neeraj alias Bunty.

Before the trial court, learned Public Prosecutor has sought to examine witnesses mentioned in the application under Section 311 Cr.P.C. with different police files on the ground that co-accused Neeraj alias Bunty had been arrested and separate challan had been filed against him in which he is facing trial. The prosecution while seeking permission to summon ASI Surjeet Singh, Inspector/SHO Naresh Yadav along with police file of present case has not given any reason as to why their summoning as witness is required or material and what evidence the petitioner wants to produce by calling them along with police file of case bearing FIR No. 699 of 2014 registered at Police Station Sector 10, Gurgaon. In the same manner, no relevance for summoning SI Karan Singh who was called to appear along with police file of case FIR No. 29 of 2016 registered at Crime Branch, Delhi and Inspector Saroj Bala who was summoned along with file of case bearing FIR No.247 of 2014 has been disclosed in the application. Even during the course of arguments, learned counsel for petitioner could not

prosecution namely ASI Surjeet Singh, Inspector Naresh Yadav and Inspector Saroj Bala. He has mainly stressed upon summoning of ASI Karan Singh with the submissions that he will produce the file of case bearing FIR No. 29 of 2016 registered for offence punishable under Section 25/27 of Arms Act at Crime Branch, Delhi to prove that the weapon recovered from the accused in that case was the same weapon which was used for murder of husband of complainant/petitioner.

The submissions of learned counsel for petitioner has no merits firstly, because production of case file of FIR No. 29 of 2016 registered at Crime Branch, Delhi will not prove that the weapon recovered in that case was used in this case when admittedly, there is no report to this effect produced or relied upon by the prosecution. Secondly, this application was moved by the Public Prosecutor who is conducting trial and while addressing arguments he has submitted that examination of police officials with different police files is required to prove that several cases have been registered against the accused Neeraj alias Bunty. Even the submissions of learned counsel for petitioner could not reconcile with the submissions by the learned Public Prosecutor before the trial court. Thirdly, it appears that the application under Section 311 Cr.P.C. was filed by the prosecution in a very casual manner without application of mind or disclosing the purpose for which the examination of witnesses of prosecution was sought. Under section 311 Cr.P.C. court is competent to summon any witness or call for any record if the examination of that witness and summoning of record is essential for just decision of the case. Neither perusal of the application nor during the course of arguments, learned counsel for petitioner could make out as to how summoning of witnesses, as mentioned in the application, is

essential for just decision of the case.

Consequently, I find no merits in this petition and the same is dismissed.

July 18, 2017

deepak

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No