

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 3259 of 2017 (O&M)

Date of decision : 25.9.2017

...

Gurcharan Singh

.....Petitioner

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Mohan Singh Rana, Advocate for the petitioner

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H. S. Madaan, J.

This revision petition is directed against the order dated 7.9.2017 passed by Additional Sessions Judge, Ludhiana, vide which he had dismissed application under Section 311 Cr.P.C. for permission to examine Rupinder Kaur w/o Jasbir Singh, r/o village Panjeta, Sub Tehsil Koom Kalan, Tehsil and District Ludhiana, as well as Investigating Officer Navdeep Singh, as prosecution witnesses.

Briefly stated, the facts of the case are that an application under Section 311 Cr.P.C. dated 5.9.2017 was filed by the

prosecution for permission to examine Rupinder Kaur, as well as Investigating Officer, Navdeep Singh, contending that those were material witnesses. Rupinder Kaur being real daughter-in-law of deceased Gurdev Singh, had seen accused party threatening Gurdev Singh and recording statement of Rupinder Kaur is necessary to prove such threats given by accused to Gurdev Singh to kill him, therefore she is a material witness. Rupinder Kaur had got her statement recorded with the police to the effect that accused had threatened Gurdev Singh in her presence but the Investigating Agency in order to give unwanted favour to the accused did not cite Rupinder Kaur as a witness and has intentionally not procured the presence of SI Navdeep Singh, Investigating Officer. Therefore, they be allowed to be examined as prosecution witnesses by invoking the provisions of Section 311 Cr.P.C.

The application was resisted by the accused challenging maintainability of the application, contending that it is based upon false grounds. It has been filed by the complainant through a private counsel, who had moved an application under Section 311 Cr.P.C. earlier also in which Rupinder Kaur and SI Navdeep Singh were not mentioned as witnesses to be examined, by way of additional evidence. The application was for re-examination of PW-3 Prem Singh, who had turned hostile; that during the investigation, statement of Rupinder Kaur was not recorded by the Investigating Officer SI Navdeep Singh; that even mother-in-law of Rupinder Kaur had appeared as PW-5 and she nowhere stated that Rupinder Kaur had made any statement to the police during investigation; that

SI Navdeep Singh has been absconding due to some criminal cases registered against him and has been declared a proclaimed offender. The only role attributed to him is regarding arrest of accused and he has not carried out any material investigation. Therefore, these two witnesses are not material and application has been filed just to prolong the proceedings.

Learned trial Court has dismissed the application with the following observations :-

“On careful perusal of the file shows that during the investigation neither any statement of alleged Rupinder Kaur recorded by the investigating officer nor she has been stated as witness in the list of witnesses of the prosecution nor even up-till the time of closing of evidence by the prosecution this fact and circumstances in any manner came on the file that Rupinder Kaur who has stated to be the real daughter in law of the deceased has also made any statement before the investigating officer. Further, even mother of Rupinder Kaur namely Gurcharan Kaur has also made deposition as PW-5 in this trial even she in her deposition made in the court nowhere stated that any statement of Rupinder Kaur was recorded by the investigating Officer. Further, even in the present application vague type of allegations has been mentioned that in the presence of Rupinder Kaur, accused threatened her father Gurdev Singh,

but when alleged threats were given nothing mentioned in the present application, where alleged threats were given nothing mentioned in the application.”

It has further been observed that:

“On careful perusal of the file as well as the version stated by the complainant in the application, I have come to the conclusion that neither the alleged Rupinder Kaur appears to have made any statement before the police during the investigation of the case nor any such type of circumstance in any manner has come on the file that Rupinder Kaur was ever joined in the investigation, so her evidence cannot be said to be essential and material evidence for just decision of the case. Moreover, when in the deposition already made by PW-5 mother of said Rupinder Kaur nothing has been stated by her that Rupinder Kaur was ever joined in the investigation or the witness in any manner of this occurrence/case and the version stated in the application is vague. Further, circumstances that SI Navdeep Singh to her alleged investigating Officer who has also not been examined by the prosecution is absconding and stated to have been declared as proclaimed offender and he also not stated to have been made any material witness of the case. Further more, the

present application under Section 311 Cr.P.C. has not been filed by the learned Additional PP for the State, but the same was filed by learned counsel for the complainant. So, in whole discussion, I have come to the conclusion that there is no merit at all in the above said application under Section 311 of Cr.P.C. Dated 5.9.2017 filed by the complainant party. Accordingly, same is dismissed and stands disposed of.”

I find that the trial Court has properly exercised its discretion. The order passed is not perverse and does not suffer from any illegality or infirmity, much less apparent on the face of it. There is no ground to interfere with the said order.

The revision petition has no legs to stand and is dismissed accordingly.

(H.S. Madaan)
Judge

25.9.2017

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Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No