

CRR-4749 of 2017 (O&M)

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

CRR-4749 of 2017 (O&M)
Date of Decision: 19.12.2017

Sh. Siddharth Dey @ Suvomoy Dey

....Petitioner

Versus

The State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Hamid Ali, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through instant petition, challenge has been laid to the judgment dated 17.11.2017 of the learned Sessions Judge, Faridabad, remanding the matter back to the trial Court for proving the FSL report and recording the statement of vendee Subhash as a Court witness, to whom the petitioner had sold his land making him to believe that petitioner was the sole legal heir of his deceased mother, though, in fact, was not.

Put pithily, on a complaint under Section 156(3) Cr.P.C., made by complainant Suvasish De, petitioner was booked in case FIR No.208 dated 05.04.2010 under Sections 403, 418, 420, 423, 425, 463, 465, 466, 468 and 506 IPC, and was held guilty under Sections 467 and 468 IPC vide judgment of conviction dated 31.03.2017 and was sentenced to undergo simple imprisonment for a period of two years each, besides payment of fine of ₹ 2,000/-, totalling ₹ 4,000/-, vide order of sentence of even date by learned Judicial Magistrate Ist Class, Faridabad.

Being aggrieved, petitioner preferred appeal. After hearing both the parties, learned First Appellate Court remanded the matter to the trial

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Court for proving the FSL report and recording the statement of vendee Subhash as a Court witness vide judgment dated 17.11.2017.

Learned counsel for the petitioner, referring to the order dated 04.04.2014 passed by the High Court of Chhattisgarh at Bilaspur in ***Criminal Revision No.94 of 2014*** titled “***Harishankar Prasad Sahu and two others v. State of Chhattisgarh***” wherein judgments of Hon'ble Supreme Court in ***Satyajit Banerjeet and others v. State of W.B. and others***, 2005(1) SCC 115 and ***Zahira Habibulla H. Sheikh v. State of Gujarat***, 2004(4) SCC 158 have been relied upon, contends that the Appellate Court ought not to have remanded the case to the trial Court more particularly when the State or the complainant had not challenged the judgment of impugned conviction against the petitioner.

I have given anxious consideration to the submissions made by learned counsel for the petitioner.

For ready reference, Section 311 Cr.P.C. is reproduced hereunder:

“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.”

From the above provision it is crystal clear that any Court is fully empowered to summon any person as a witness at any stage of inquiry, trial or other proceedings. Such power is not confined to any particular class or person. Only satisfaction of the Court is required to call a witness on its own motion or on the application of the prosecution.

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On a perusal of the record, it transpires that though the learned trial court had, on the strength of evidence on the record, convicted and sentenced the petitioner under sections 467 and 468 IPC, but it was the bounden duty of the trial court to prove the FSL report by examining the hand-writing expert. Even the statement of the vendee Subhash, to whom the land was sold, was also required to be recorded by summoning him as a court witness, under Section 313 Cr.P.C., but he did not take any step in this direction, thereby making a procedural defect therein and arrived at a conclusion that the case of the prosecution has been proved. The learned first appellate court in para no.5 of its judgment has observed that “the report submitted by hand writing expert of FSL is not per-se admissible under section 293 Cr.P.C. The hand writing expert needs to be examined to check and verify on what basis he gave the positive report against the accused. No doubt, the appellant-accused is beneficiary in the present case for getting the mutation in his favour and for executing the sale deed in favour of Subhash, but seeing the fact that he denied this particular fact, the examination of hand writing expert from FSL, becomes necessary to reach at the truth. Ld. JMIC can also call vendee Subhash as court witness to verify the true fact.”

The learned appellate court, keeping in view the finding referred to above, directed the trial court to record the additional evidence by examining hand writing expert from FSL and also to examine vendee Subhash as a court witness to verify the true facts and thereafter pass a fresh decision in accordance with law. The finding recorded by the first appellate court, in the considered opinion of this court, is correct and does not call for

interference in exercise of revisional jurisdiction by this Court more particularly when the petitioner has to show that what prejudice is caused to

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him if the FSL report, already lying on the record, is get legally proved and vendee Subhash is examined as a Court witness.

Facts and circumstances of the judgments, referred to above, and relied upon by learned counsel for the petitioner are not identical to the facts of the present case, therefore, no benefit of the same can be given to the petitioner. In *Harishankar Prasahd Sahu's case* (supra), His Lordship of High Court of Chhattisgarh, in para 13 of his judgment giving reference to the Hon'ble Supreme Court, has observed that the court may remand the matter only in very exceptional case, where it is found that there is a procedural defect or a manifest error of law resulting in a flagrant miscarriage of justice. Meaning thereby that, in both the judgments of the Hon'ble Supreme Court, relied upon by the High Court of Chhattisgarh, it is held that any witness can be called by the court at any time. Therefore, the plea of the learned counsel that the learned first appellate court was not competent to remand the case, in my considered opinion, is not tenable, keeping in view the observations made hereinabove.

In view of foregoing reasons recorded above, this court does not find any illegality or perversity in the impugned judgment passed by the first appellate court. Consequently, revision, being without any merit, fails and is dismissed.

December 19, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No