

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

**CRM-M No.14867 of 2016 (O&M)
Date of Decision: 30.01.2018**

**NaveenPetitioner
Vs
State of HaryanaRespondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Anshuman Dalal, Advocate
for the petitioner.

Mr. M.D. Sharma, A.A.G., Haryana.

Ms. Baljit Mann, Advocate
for respondents No.2 to 4.

RAJ MOHAN SINGH, J.

CRM No.28729 of 2016

The present application has been filed for impleading the accused/applicants Amit, Rajbir and Billu @ Dharmabir as party-respondents No.2 to 4.

With the concurrence of the parties, the aforesaid applicants are ordered to be impleaded as party-respondents No.2 to 4. Amended memorandum of parties is taken on record.

Application stands disposed of.

CRM-M No.14867 of 2016 (O&M)

[1]. Petitioner has sought quashing of the order dated 18.04.2016 passed by the Addl. Sessions Judge, Rohtak whereby application under Section 311 Cr.P.C. was dismissed.

[2]. Brief facts are that the FIR No.345 dated 28.09.2013 was registered at the instance of the petitioner for the offences under Sections 302/34 IPC, Sections 25/54/59 of the Arms Act and Section 3(i)(x) of the Scheduled Castes & the Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sadar Rohtak. According to allegations in the FIR, the complainant/petitioner alleged that after completing B.A, he often used to go to Sukhpura Chowk for learning typing. On the day of occurrence at 6.00 p.m., he and his brother Yogesh, Vikas son of Rajinder Pandit, Anup, Rinku, Parveen and Kapil were doing exercise in the Academy of the village Kahni. Sumit and his younger brother were also doing exercise there. While doing exercise, Sumit picked up Yogesh's phone and threw it down. As a result of that there was an altercation between them. Sumit called his brother Amit and then Amit son of Rajbir, Rajbir son of Sahab Singh and Billu son of Sahab Singh came to the Academy from their houses. Amit was armed with a knife. On seeing them, brother of the complainant ran away out of fear. Yogesh was caught hold by Sumit, Billu, Rajbir and younger son of Billu. Amit with an intention to kill inflicted knife blows on the left side of the chest of his brother. Brother of the complainant fell down on receiving of knife blows. All of them gave kick and fist blows to the brother of the complainant in lying condition.

Complainant raised hue and cry and many boys attracted to the spot. Thereafter all the accused persons ran away with their weapons while using derogatory words in the name of the caste of the complainant with threats that they would not be spared in future. The complainant with the help of Vikas, Anup and Kapil took the injured Yogesh to the PGIMS, Rohtak, however he died on the way due to injuries.

[3]. Accused Shubham and Sumit were found to be juvenile. Amit was challaned. Dharambir and Rajbir were found to be innocent and they were placed in column No.2. After framing of charges, the complainant was examined as PW-3 on 04.11.2014 and on the basis of said deposition, the complainant filed an application under Section 319 Cr.P.C. for summoning of Rajbir and Dharambir @ Billu to face trial along with accused already facing trial. The application was allowed vide order dated 14.01.2015 and Rajbir and Dharambir @ Billu were summoned under Section 319 Cr.P.C. to face trial for the offences in question.

[4]. Statement of the complainant dated 04.11.2014 in examination-in-chief was incomplete and the same was deferred as the complainant wanted to move an application under Section 319 Cr.P.C. The prayer was allowed on 04.11.2014 and thereafter the complainant deposed in examination-in-chief on

14.05.2015 and he was cross-examined also. In his statement dated 14.05.2015, the complainant resiled and did not support the case of the prosecution. The concluded part of the statement was to the following effect:-

“My sister namely Neetu used to reside at Gurgaon since 2011 as she had married with the boy of her choice and we were not happy with that marriage. It is correct that during the pendency of this case prior to the recording of my statement, my sister moved several applications against the above named accused before the higher authorities of the police for taking legal action against these persons. It is correct that every time those applications were enquired by higher authorities of police and same were found false. It is correct that the statement dated 4.11.2014 was made by me under the pressure of my sister and other relatives and today I am not in a pressure of anyone as the above said false complaints have no force and the same were found false.

RO & AC
Sd/- Naveen Kumar

Sd/- (Krishan Kant)
Addl. Sessions Judge
Rohtak, 14.5.2015”

[5]. In the aforesaid statement, the factum of applications filed by his sister Neetu was referred which were enquired by the higher authorities of the police and were found to be false. Complainant further submitted that the statement dated 04.11.2014 made by him was under the pressure of his sister and other relatives. At the time of making the aforesaid statement on 14.05.2015 the complainant stated that he was not

under the pressure of anyone and the complaints filed by his sister were found without any force and the same were found to be false by the police.

[6]. Thereafter an application for summoning the complainant under Section 311 Cr.P.C. was filed with the allegations that before examination of the complainant, he was forcibly taken away to Kohlapur (Maharashtra) by the persons of the accused party by threatening the complainant. Threats were given to eliminate the complainant and his family. Therefore, at the time of cross-examination the complainant was forced not to depose truly. Sister and mother of the complainant had moved complaints to the police in this regard.

[7]. The application was dismissed by the Addl. Sessions Judge, Rohtak vide the impugned order dated 18.04.2016 on the premise that as per the statement of the complainant on 14.05.2015 (PW-9), he did not raise any allegation against the accused. Even before making said statement, he made same statement before the Juvenile Justice Board, Rohtak on 20.01.2015, which ultimately resulted in acquittal of the co-accused Sumit and Shubham on 11.02.2015.

[8]. Learned counsel for newly added respondents No.2 to 4 submitted that the judgment of acquittal dated 11.02.2015

passed by the Principal Magistrate, Juvenile Justice Board, Rohtak was never assailed by the petitioner and he cannot be allowed to breath hot and cold in the same breath. The complainant/petitioner moved a complaint to the Incharge, Police Post, Ghillor Kalan on 03.02.2015 wherein he stated that his sister was living in Gurgaon and used to visit the village sometimes. The alleged threats received by his sister would have been disclosed to him and the alleged threats were negated by the complainant. Filing of application by Neetu was stated to be due to some exhortation. The complainant had no dispute in the village and he stated that no action be taken on the complaint of his sister. This statement was made by the complainant/petitioner on 03.02.2015 after making statement in the Court of Principal Magistrate, Juvenile Justice Board, Rohtak.

[9]. I have heard the submissions made by learned counsel for the parties.

[10]. The judgment of acquittal of Sumit and Shubham on 11.02.2015 had already attained finality. In the said judgment, it was recorded that all the material witnesses including the eyewitness (complainant) had not supported the case of prosecution. The complainant/petitioner appeared as PW-15 in the said case before the Juvenile Justice Board.

[11]. In the complaint moved by sister of the complainant, the factum of alleged kidnapping of the complainant by the persons of the accused party were never recited. Those complaints were duly inquired into by the police and were found to be false. No action was taken. Thereafter sister of the petitioner never challenged so called inaction of the police in not investigating the case. The deposition of the complainant before the Juvenile Justice Board was on 20.01.2015 i.e. before the complaint dated 03.02.2015 filed by his sister addressed to the Chief Justice of Punjab and Haryana High Court and to the Police.

[12]. The petitioner could not give name and description of alleged kidnappers, who took him to Kohlapur (Maharashtra). No date, time, place and manner of abduction were given by the petitioner. The petitioner never made any complaint to the police in respect of his alleged kidnapping, nor his sister gave any clue regarding his alleged kidnapping to her nearer and dearer. The complaints filed by the sister of the complainant were negated by the petitioner himself. The statement of the petitioner made before the Juvenile Justice Board was duly appreciated and the same resulted in acquittal of the juveniles.

[13]. For invoking provisions in terms of Section 311 Cr.P.C., the Court has all competence to assess the nature of evidence sought to be adduced. If the Court has satisfied itself that the

evidence would go in a long way to decide the controversy to the satisfaction of the Court, then the Court can allow such an evidence to be led. It is the satisfaction of the Court to allow such evidence, if the same is required for just and proper decision of the case. Sister and mother of the petitioner were never cited as prosecution witnesses.

[14]. Totality of facts and circumstances of the case would show that the petitioner now intends to resile from his statement given in favour of the accused in the main proceedings for the reasons best known to him. He had resiled in the proceedings before the Juvenile Justice Board, Rohtak which ultimately culminated in acquittal of Sumit and Shubham. It appears that the petitioner intends to bargain with the accused party to which the Court cannot be made party.

[15]. In view of above, I find no reasons to differ with the conclusion arrived at by the trial Court while dismissing the application under Section 311 Cr.P.C. This petition is accordingly dismissed.

January 30, 2018

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No