

CRM-M-16683 of 2017

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

CRM-M-16683 of 2017
Date of Decision: 17.09.2018

Jitender Singh and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. O.P. Dhankhar, Advocate, for the petitioners.
Mr. Yashwinder Singh, DAG, Haryana.
Mr. S.S. Nar, Advocate,
for Mr. Naveen Jaglan, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C. prayer has been made for setting aside order dated 06.04.2017 (Annexure P-6) passed by learned Additional Sessions Judge, Panipat, accepting the revision petition filed by respondent No.2-complainant.

Briefly, petitioners were facing trial in case FIR No.8 dated 21.01.2012 registered under Sections 323, 325, 34 and 506 IPC at Police Station Israna, Panipat, on the statement of respondent No.2-complainant. After conclusion of trial and advancing arguments, trial Court fixed the case for pronouncing judgment vide order dated 21.12.2016. However, before pronouncement of judgment, respondent No.2-complainant moved application under Section 311 Cr.P.C. for summoning two prosecution witnesses, namely, Lehna Singh and Satyawar in additional evidence, which, after hearing both the sides, was dismissed vide order dated 21.02.2017 (Annexure P-4).

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Being aggrieved, respondent No.2-complainant preferred revision petition against the said order, which was accepted. Resultantly, setting aside order dated 21.02.2017, the revisional Court directed the trial Court to record fresh finding after going through the entire record.

Learned counsel for the petitioners referring to ***Tilak Raj v. State of Haryana***, 1990 *Criminal Court Judgments* 751 (P&H) and ***J. Hari Singh v. State of Haryana***, 2002(3) *Criminal Court Judgments* 628 (P&H) *inter alia* contends that Section 311 Cr.P.C. should not be invoked for filling up lacuna in prosecution case. Trial Court failed to appreciate that petitioners were facing trial since the year 2012 and further that application of respondent No.2 under Section 311 Cr.P.C., after conclusion of trial and hearing arguments, but before pronouncement of judgment, was not maintainable.

On the other hand, learned State counsel vehemently opposed the submissions made by learned counsel for the petitioners.

Having given thoughtful consideration to the submissions made by both the sides, this Court finds that the instant petition is completely devoid of any merit for the reasons to follow.

Both the witnesses, namely, Lehna Singh and Satyawan ordered to be summoned as additional prosecution witnesses were present at the spot and had allegedly rescued respondent No.2 from the clutches of the petitioners. Even their statements under Section 161 Cr.P.C. were recorded during investigation. However,

they were not cited as prosecution witnesses by the Investigating

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Officer while submitting final report under Section 173(2) Cr.P.C. in Court for the reasons best known to him. Therefore, respondent No.2-complainant for the lapse of Investigating Officer cannot be made to suffer, more particularly, when both the abovesaid persons are necessary to be examined to corroborate testimony of respondent No.2.

Revisional Court has only directed the trial Court to record fresh finding after perusing the entire record without recording any adverse finding against the petitioners.

For ready reference, finding given by the Revisional Court vide impugned order reads as follows: -

“As a sequel to my above discussion, I find merit in the revision petition and the same is hereby accepted. The impugned order dated 21.02.2017 is hereby set aside and the learned trial Court is directed to give fresh finding after perusing the entire record. The parties through their counsel are directed to appear before the trial Court on 12.04.2017 for further proceedings in accordance with law. Copy of the judgment be sent to learned trial Court along with record of the lower court. File be consigned to the record room, after due compliance.”

In view of above discussion, petition is dismissed.

September 17, 2018
R.S.

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No