

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

CRM-M-24186-2018 (O&M)

Date of Decision:-5.7.2018

Padam Paul

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Mohit Sadana, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

The petitioner assails order dated 26.2.2018 passed by learned Sub Divisional Judicial Magistrate, Dhuri, whereby an application filed by the State for leading secondary evidence and as well as an application under Section 311 Cr.P.C. for examining Sh. Dharam Paul Puri, Advocate and Sh. Baldev Krishan Goyal, Advocate has been accepted.

A few facts, necessary to notice for disposal of this petition are that the FIR in question was lodged at the instance of Maya Devi @ Mayawanti, who alleged that she had executed a power of attorney on 12.2.1974 in favour of her husband in respect of her property. However, her husband expired in the year 1991. It is alleged that her son namely Ravinder Kumar Paul @ Ravinder Paul, Advocate alongwith her grandson namely Prem Dutt Paul forged the aforesaid power of attorney and added their

names in the same and on the basis of the said forged power of attorney sold the property in question on 6.2.2009 to one Prem Singh.

The accused i.e. the son and grandson along with purchaser of the property in question were challaned. During the course of evidence, the prosecution examined PW-5 Amrinder Singh, Registration Clerk, Office of Sub Registrar, Sangrur. However, during the proceedings of the trial, an application had been filed by the prosecution so as to permit the prosecution to lead secondary evidence in respect of the said power of attorney dated 12.2.1974 on the ground that R.K. Paul accused had not produced the same before the police. The application, however, remained undecided and PW-5 Amrinder Singh was examined. Subsequently, another application dated 20.2.2018 was filed by the prosecution for recalling PW-5 Amrinder Singh as well as for examining Sh. Dharam Paul Puri, Advocate, Sangrur and Sh. Baldev Krishan Goyal, Advocate, Sangrur, who are witnesses of the said power of attorney dated 12.2.1974. Both the said applications were accepted by the learned Sub Divisional Judicial Magistrate, Dhuri vide order dated 26.2.2018, which has been impugned by way of filing the present petition.

I have heard the learned counsel for the petitioner and have also perused the impugned order as well as the documents annexed with the present petition.

The entire case of the prosecution hinges on the power of attorney dated 12.2.1974. No doubt, PW-5 Amrinder Singh had been examined by the trial Court but at that time the application filed by the prosecution for leading secondary evidence had not been decided. It is the specific case of the prosecution that the original power of attorney had not been produced by the accused R.K. Paul necessitating leading of secondary

evidence. It is for the purpose of proving the said power of attorney and its alleged forgery that the prosecution seeks to examine the attesting witnesses namely Sh. Dharam Paul Puri, Advocate, Sangrur and Sh. Baldev Krishan Goyal, Advocate, Sangrur. The law in this regard is fairly liberal inasmuch as powers under Section 311 Cr.P.C. can be exercised at any time before the pronouncement of the judgment. As already stated above, the present case hinges solely around the factum of the genuineness of the power of attorney dated 12.2.1974 and the examination of the aforesaid witnesses is of utmost importance to adjudicate upon the controversy in hand.

In these circumstances, I do not find any ground to interfere in the impugned order dated 26.2.2018 passed by learned Sub Divisional Judicial Magistrate, Dhuri and the same is hereby upheld. There is no merit in the present petition and the same is hereby dismissed.

It is, however, clarified that none of the observations made above shall be taken to be an expression on merits of the main case.

5.7.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No