

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-32376-2016 (O&M)

Date of decision: 08.05.2018

Jasbir Singh

... Petitioner

Vs.

State of Punjab

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. K.S. Dhillon, Advocate
for the petitioner.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

Mr. B.D. Sharma, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for setting aside the order dated 05.08.2016 (Annexure P-7) passed by the trial Court, vide which application filed by the petitioner under Section 311 Cr.P.C. for recalling of two prosecution witnesses i.e. PW6 Gurbachan Singh and PW7 Tarlok Singh was dismissed.

Brief facts of the case are that the petitioner is facing trial in FIR No.01 dated 10.01.2013 under Sections 420, 465, 467, 471, 120-B, 380 of the Indian Penal Code (for short 'IPC'), registered at Police Station NRI Jalandhar. During recording of the prosecution evidence, statement of PW6 Gurbachan

Singh was recorded on 29.04.2014 and thereafter, cross-examination of this witness was deferred for 11.06.2014, on which date, the same was completed. This witness had stated that the maternal grandmother of petitioner Jasbir Singh namely Ram Piari, who is parental grandmother of complainant Narinder Pal Singh, had purchased some land and had executed a deed in favour of the complainant and his brother. It is further stated that the petitioner-accused had given some part of the said land on lease to BSNL without permission of the complainant and has committed fraud and destroyed the sale deed. In cross-examination, this witness denied having signed any document as a witness of the deed executed by said Ram Piari. This witness further denied the suggestion that the complainant, in conspiracy with his father Tarlok Singh PW7 and PW6 Gurbachan Singh, had grabbed the share of the petitioner-accused.

A perusal of the statement of PW6 shows that no suggestion in the cross-examination of this witness was given with regard to execution of any document and similarly, no document was put to this witness during the cross-examination, allegedly executed by Ram Piari or that the statement of this witness was recorded before any revenue authority.

Similarly, PW7 Tarlok Singh, who is father of complainant Narinder Pal Singh, deposed on the same lines. His examination-in-chief was recorded on 06.08.2014 and was deferred on request of defence counsel and on 25.09.2014, the cross-examination was completed. In cross-examination, this witness denied the suggestion that any power of attorney was executed by his sister Nirmal Kaur on 26.03.2007. This witness further stated that while entering of the mutation on the basis of Will of Ram Piari, he was present before the revenue officials. However, this witness in cross-examination

deposed as under: -

“I have no knowledge whether Ram Piari my mother has executed any power of attorney in favour of my sister Nirmal Kaur qua the telephone exchange.

Remaining xxxxxxxx is deferred as learned defence counsel moved application for summoning of witness which is allowed only if dasti summons are obtained and got served for 29.09.2014.

At this stage learned counsel for complainant submitted that if the photocopy of mutation No.10377 is exhibited. He also submitted that if some other documents are sought to be summoned, same can be brought by the accused in his defence. The witness stated that he is go back Bhutan. Learned counsel for complainant also submitted that if some record was to be summoned, the application should have been made when the witness was examined in chief. Learned defence counsel stated that he does not want to disclose his defence before starting cross-examination.

Court order: The defence is directed to continue with the cross-examination by confronting the copy of aforesaid documents and in case some other record is required it can be brought by defence.”

In further cross-examination, the certified copy of mutation No.10377 was admitted by this witness and was exhibited as Ex.DX. and this witness was confronted with a document Ex.DY dated 05.10.2012 regarding his earlier statement. This witness was further put Ex.P2, a copy of the sale deed,

qua which he denied the suggestion that it was a forged and fabricated document.

Thereafter, the petitioner/accused examined 08 witnesses in his defence and one witness DW8 Mohinder Singh, Assistant Office Kanungo, Tehsil Jalandhar-II, Jalandhar deposed on 12.05.2016 that he has brought the original file of entry of mutation No.10377, which contained photocopy of death certificate of Ram Piari, statements of Jaswinder Singh, Deed Writer, Gurbachan Singh and Tarlok Singh, who are PW6 and PW7 along with some other persons, including the affidavits. These documents were marked as Mark A1 to Mark A7.

The petitioner filed an application under Section 311 Cr.P.C. for recalling two of the prosecution witnesses i.e. PW6 Gurbachan Singh and PW7 Tarlok Singh. The reasons given in the application for recalling of these two witnesses; are firstly that after going through the statements of these two witnesses, it came to the notice of the petitioner that PW6 has stated that deceased Ram Piari had executed a Will in favour of her grandson Narinder Pal Singh-complainant in presence of this witnesses, whereas in cross-examination, this witness stated that he has never signed any document as a witness, which was executed by Ram Piari. The second reason was that at the time of sanctioning of mutation No.10377, PW6 made a statement before the revenue authorities and for this purpose, this witness needs to be re-examined.

The reason given in the application for recalling PW7 Tarlok Singh is that this witness has also tendered an affidavit before the revenue authorities while sanctioning of aforesaid mutation along with his three sisters, therefore, the said statement is to be put up to this witness by recalling him. It is thus

prayed in this application that since these documents, which were produced by DW8 Mohinder Singh, were not exhibited and were rather marked as Mark A1 to Mark A7, the same can be exhibited by recalling PW6 and PW7. This application (Annexure P-5) was contested by the State by way of filing reply (Annexure P-6). The trial Court vide impugned order dated 05.08.2016 (Annexure P-7) dismissed the application and the petitioner has filed the present petition challenging the impugned order.

Learned counsel for the petitioner has laid emphasis on the cross-examination of PW7 Tarlok Singh, which is reproduced above, to submit that during cross-examination, the trial Court has once decided to grant time to summon a witness, however, on representation of the complainant that copy of mutation No.10377 can be exhibited and if some other documents are sought to be summoned, the same can be brought by the accused in his defence, as PW7 had to go back to Bhutan, the Court passed an order that defence is directed to continue with the cross-examination by confronting the copy of aforesaid documents and in case some other record is required, it can be brought by defence. Learned counsel for the petitioner has submitted that since liberty was granted to the petitioner to prove the aforesaid documents by leading the defence evidence, the trial Court has wrongly dismissed the application under Section 311 Cr.P.C.

Learned counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **U.T. of Dadra & Haveli and another Vs. Fatehsinh Mohansinh Chauhan, 2006 (4) RCR (Crl.) 113**, wherein it has been held that after the defence evidence is closed, the prosecution can be allowed to summon a witness, which was not examined due to error or

inadvertent mistake, as it will not amount to filling up of lacuna. Counsel for the petitioner has further relied upon a judgment of this Court in **Dr. Gurpreet Kaur, M.B.B.S., Prop. Ghai Maternity Hospital Vs. Appropriate Authority-cum-Senior Medical Officer, Incharge Sub-Division Hospital Phillaur, 2010 (2) RCR (Crl.) 169**, in which it is held that powers under Section 311 Cr.P.C. can be exercised by the Court at any stage of an inquiry, trial or other proceedings under the Criminal Procedure Code.

Learned counsel for the respondent-complainant, in reply, has submitted that the Court order dated 25.09.2014, passed during the cross-examination itself, was never challenged by the petitioner before any higher Court. It is further submitted that the application under Section 311 Cr.P.C. has been moved by the petitioner to fill up the lacunae at the fag end of the trial as he has already examined 08 defence witnesses and the Court has earlier granted liberty to confront the documents (Mark A1 to A7, which the petitioner proposes to exhibit by filing the application under Section 311 Cr.P.C.). However, the petitioner, despite the fact that examination-in-chief was recorded on 06.08.2014 and the cross-examination was conducted on 25.09.2014, never opted for confronting these documents either to PW6 or PW7 by obtaining the copies from the relevant office where mutation was sanctioned.

Learned counsel for the complainant has relied upon **Rattan Lal Vs. Prahlad Jat and others, 2017 (4) RCR (Crl.) 410**, wherein the Hon'ble Supreme Court has held as under: -

“In order to enable the court to find out the truth and render a just decision, the salutary provisions of [Section 311](#) are enacted whereunder any court by exercising its discretionary authority at any stage of inquiry, trial or other proceeding can summon any

person as witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person already examined who are expected to be able to throw light upon the matter in dispute. The object of the provision as a whole is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. This power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Recall is not a matter of course and the discretion given to the court has to be exercised judicially to prevent failure of justice. Therefore, the reasons for exercising this power should be spelt out in the order.”

Thus, it is held by the Hon’ble Supreme Court that statements of two witnesses were recorded on two different dates and they were cross-examined at length during the said period and therefore, there was no reason to re-examine the said witnesses. The order passed by the High Court, setting aside the order of the Sessions Court, was set aside and even a direction was issued to the trial Court not to take into consideration the evidence of those two witnesses, which were recorded after the order of the High Court.

After hearing learned counsel for the parties, I find no merit in the present petition, for the following reasons: -

(i) It is apparent on record that examination-in-chief of PW6 was recorded on 29.04.2014 and he was cross-examined on 11.06.2014, thus, there was sufficient time for the petitioner to obtain the copies of the aforesaid documents and confront this witness during the cross-examination. A perusal of cross-examination of this witness shows that the petitioner had put all his defence including asking questions about the documents, however, the same were never put to this witness. Similarly, examination-in-chief of PW7 was

recorded on 06.08.2014 and after some time, it was completed on 25.09.2014. During his cross-examination, though the petitioner has asked for summoning for a witness to produce the file pertaining to mutation No.10377 in order to confront this witness with his statement made before the revenue officials, however, the trial Court observed that the same can be brought by leading defence evidence. Needless to say that copy of mutation No.10377 was exhibited as Ex.DX and statement of this witness made before the revenue officials dated 05.10.2012 was exhibited as Ex.DY. Even the sale deed Ex.P2 was also put to this witness, to which he denied it to be a forged document. Thus, it is apparent that the petitioner has cross-examined this witness at length and has put his defence to him.

(ii) The reasons given in the application (Annexure P-5) to re-examine these witnesses are not bonafide, as it appears that the petitioner want to delay the proceedings as after leading 08 defence witnesses, by which he could have proved all the documents, the application was filed that petitioner intends to confront PW6 and PW7 by way of recalling them.

(iii) The trial Court has rightly held that in the application, no explanation is given why the record pertaining to mutation No.10377 Ex.DX was not earlier produced by the petitioner, as it being a public record, can be obtained by applying a certified copy or taking a copy under the Right to Information Act. It is not the case of the petitioner that this record was not to his knowledge, as the FIR is registered with the allegations that the petitioner-accused has misused the power of attorney of Smt. Ram Piari, the maternal grandmother of the petitioner and parental grandmother of the complainant and the same was well within the knowledge of the petitioner being a beneficiary of

this mutation. It is also held by the trial Court that witnesses were cross-examined at length.

(iv) The case law cited by the petitioner in **Dr. Gupreet Kaur's** case (supra) is distinguishable, as it was a case where the application under Section 311 Cr.P.C. was moved to summon a witness, which was not examined earlier due to error or inadvertent mistake.

(v) The judgment relied upon by the respondent in **Rattan Lal's** case (supra) is applicable to the present case, where the Hon'ble Supreme Court has held that the object of provisions of Section 311 Cr.P.C. is to do justice not only from the point of view of accused and the prosecution but also from the point of view of an orderly society. This power has to be exercised only for strong and valid reasons with caution and circumspection, not as a matter of course and discretion should be exercised judiciously to prevent failure of justice. If a witness is already examined and cross-examined at length, after a long delay, filing an application for re-examination is not justifiable.

For the reasons recorded above, I find no ground to interfere in the impugned order dated 05.08.2016 (Annexure P-7) passed by the trial Court, therefore, the present petition is dismissed.

[**ARVIND SINGH SANGWAN**]
JUDGE

08.05.2018
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No