

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

Criminal Misc.No.M-3705 of 2018 (O&M)

Date of Decision : 01.12.2018

Asgar Ali

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Parveen Mann, Advocate for
Mr. R.S.Budhwar, Advocate
for the petitioner.

Mr. Raj Kumar Makkad, DAG, Haryana.

Mr. M.K.Chauhan, Advocate for complainant

RAJ SHEKHAR ATTRI, J.

The petitioner has preferred the instant petition under Section 482 Cr.P.C. for quashing the order dated 17.04.2017 (Annexure P-3), passed by the learned Sub Divisional Judicial Magistrate, Bilaspur, in case FIR No.86 dated 14.08.2010, registered under Sections 406, 420, 506, 120-B IPC, at Police Station Chhachhrauli, District Yamuna Nagar, vide which the application under Section 311 Cr.P.C., filed by the petitioner/complainant for summoning the witnesses alongwith the record has been dismissed and to quash the order dated 19.12.2017, passed by the learned Addl. Sessions Judge, Yamuna Nagar at Jagadhri vide which the revision petition filed by the petitioner against the aforesaid order dated 17.04.2017 has been dismissed.

The petitioner is the victim under the provisions of Section 2

(wa) of the Code of Criminal Procedure (in short 'the Code').

He moved an application under Section 311 of the Code for summoning the record keeper of the Court of Sh. Vinod Kumar, Civil Judge (Junior Division), Bilaspur as well as the record keeper, civil record room alongwith judicial record.

The said application was contested but the same was dismissed, vide impugned order dated 17.04.2017 by the learned trial court while observing as under:-

“In para No.4 of the application, it has been averred by the applicant that both cases are regarding the same matter and were between the same parties but it also incumbent upon the applicant to disclose which exact document he wants to prove by summoning the witnesses alongwith the case file. A case file consist a lot of documents but which document of the case file titled as “Asgar Ali Vs. Liyakat Ali” and “Murtza Ali Vs. Liyakat Ali” are relevant for the proper decision of the case have not been mentioned by the applicant. It appears that the applicant is only trying his luck and is showing in the dark which cannot be allowed as it can lead to misuse of process of law and as the applicant has not mentioned the exact document which he wants to prove from the case file, it is observed that the finding as to whether the documents are relevant or non relevant for the proper decision of the case can not be given. Judgment relied upon Ld. Counsel for the applicant are not disputed but are applicable to the peculiar circumstances of the case and the applicant himself has not clear the clouds and has not taken the specific stand as to which document he wants to prove by summoning the witness along with the case file. Consequently, the present application stands dismissed.”

Learned counsel for the petitioner has contended that initially the petitioner preferred a petition i.e. Criminal Misc.No.M-33650 of 2017

which was dismissed as withdrawn vide order dated 28.09.2017 which reads as under:-

“After arguing at length, faced with the likely consequences, learned counsel for the petitioner wishes to withdraw the present petition reserving his right to move the trial Court under the relevant provisions of Cr.P.C. and, thereafter, to come before this Court on the same very grounds, if so necessitated.

Dismissed as withdrawn with the liberty aforesaid.”

Thereafter, in pursuance of the aforesaid order dated 28.09.2017, the petitioner preferred a revision petition before the learned Sessions Judge which was entrusted to the learned Addl. Sessions Judge and the same was also dismissed vide order dated 19.12.2017 mainly on the ground that the relevancy of the documents to be produced has not been mentioned.

Before this Court, the petitioner placed on record a copy of civil suit No.498 dated 23.12.2008 titled as Murtza Ali vs. Liyakat Ali (Annexure P-9), copy of the order dated 19.02.2011 alongwith decree sheet (Annexure P-10), passed by the learned Addl. Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, vide which the said suit was dismissed as withdrawn and the copy of judgment dated 06.03.2017, passed by the Civil Judge (Junior Division), Bilaspur Sub Division.

I have heard learned counsel for the parties and have gone through the record.

A bare perusal of the application under Section 311 Cr.P.C. transpires that the same is not happily worded and the purpose of calling the witnesses is not mentioned therein. The petitioner wants to produce the

copies of the judicial record and learned counsel for the petitioner has submitted that the documents are per-se admissible under Section 76 read with Section 80 of the Indian Evidence Act.

A bare perusal of the application under Section 311 of the Code also transpires that the application is not happily worded as the documents to be produced and proved from the record have not been mentioned therein.

However, giving adequate opportunities to the parties to adduce evidence is a fundamental principle of natural justice and a golden rule of the fair trial. The right to adduce evidence cannot be thwarted on technical reasons.

This Court deems it appropriate that the petitioner be allowed to file fresh application under Section 311 of the Code and he may also move an application for admission and denial of the documents under the provisions of Section 294 of the Code.

In this view of the matter, the instant petition is accepted and the impugned orders dated 17.04.2017 and 19.12.2017 are set aside. However, the petitioner is given liberty to file fresh application under Section 311 Cr.P.C. as well as application under Section 294 Cr.P.C. showing the purpose and relevancy of documents, within a period of 10 days from the date of receipt of certified copy of this order.

01.12.2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No