

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-42989 of 2018

Date of decision:04.10.2018

Gaurav Bhardwaj

...Petitioner

v.

State of Haryana

...Respondent

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mr. Karan Vir Nanda, Advocate for the petitioner.

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**Inderjit Singh, J.**

The petitioner has filed this petition under Section 482 Cr.P.C. for quashing of order dated 7.9.2018 (Annexure-P.10) passed by learned Additional Sessions Judge, Kaithal, in case FIR No.01 dated 24.1.2012 registered for the offences under Sections 409, 420, 467 and 120-B IPC and Section 13(1)(d) of the Prevention of Corruption Act at Police Station SVB Ambala, whereby an application under Section 311 Cr.P.C dated 3.8.2018 (Annexure-P.8) filed by the prosecution in order to bring on record the bills, which were not a part of the challan, in order to cover-up their investigation errors, negligence and deficiencies, has been allowed.

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

From the record, I find that during the pendency of the trial, an

application under Section 311 Cr.P.C. was filed by the prosecution for summoning witness Jitender cited at serial No.11 of the list of the prosecution witnesses to come present along with various bills, as detailed in para 2 of the application, for the reason that as per the statement of said Jitender recorded by the Police under Section 161 Cr.P.C., the copies of said bills were taken into Police custody by the Investigating Officer, but the said bills are not present in the paper book(s)/challan filed in the case.

The defence counsel opposed this application and stated that non-availability of said bills can be rectified only by way of further investigation under Section 173(8) Cr.P.C. and further that this application has been filed to fill-up the lacuna. There is no recovery memo vide which the bills were taken into Police custody.

The learned Additional Sessions Judge, Kaithal, after going through the record found that the statement of witness Jitender recorded under Section 161 Cr.P.C. is on the record. There is mention of these seven bills in para 2 of that application, with a report that the originals of the said bills were obtained by accused Gaurav Bhardwaj, under misrepresentation of making payment, later on, which was actually never made to said Jitender. The learned Additional Sessions Judge, Kaithal vide impugned order dated 7.9.2018 allowed this application by holding that the statement of Jitender in the Court as prosecution witness without the said bills is of no use.

A perusal of the impugned order shows that the order has been passed by the Court below as per law. Merely, that the photo copies of the

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bills are not on the record or are not taken in the Police possession by the Investigating Officer, it cannot be held that a prejudice will be caused to the accused on accepting the application. There is mention of these bills in the statement recorded under Section 161 Cr.P.C. of Jitender, who has already been shown as prosecution witness at serial No.11 in the list of witnesses. The accused will get the opportunity to cross-examine the witness also. As this evidence is necessary for the just decision of the case, therefore, the application has been rightly allowed by the learned Additional Sessions Judge, Kaithal. No illegality has been committed by the Court below by accepting the application. Hence, no ground is made out for quashing of the impugned order.

Therefore, finding no merit in this petition, the same is dismissed.

October 04, 2018.

**(Inderjit Singh)**  
**Judge**

\*hsp\*

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | No  |