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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-52310-2018 [O&M]

Date of Decision : November 28, 2018

Kashmir Singh

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Neeraj Yadav, Advocate,
 for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure for quashing impugned order dated 13.08.2018 (Annexure P/7) passed by learned Chief Judicial Magistrate, Amritsar whereby application under Section 311 Cr.P.C. filed by the petitioner was dismissed and the order dated 5.11.2018 (Annexure P/9) passed by learned Additional Sessions Judge, Amritsar whereby revision petition was also dismissed

2. Facts relevant for the purpose of decision of present controversy; that the matter is pending in the Court of learned Chief Judicial Magistrate, Amritsar. An application under Section 311 Cr.P.C. for summoning true copy of Power of Attorney dated 22.03.1995 containing the original signatures of complainant, Kashmir Singh for verification of his

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signatures, was filed. As per the petitioner, during investigation, the complainant had given specimen signatures to verify the same with the alleged signatures on the power of attorney, but the same could not be verified because the original was in possession of Harbhajan Singh and he refused to hand over the same. The complainant moved an application for appointment of Hand Writing Expert to verify the signatures of the complainant with the signatures on the alleged power of attorney, but the same was declined by the Court below. Thereafter an application under Section 91Cr.P.C. for issuance of directions to the accused to place on record the original power of attorney was filed, but the same was also declined by the Court below.

3. An application under Section 294 Cr.P.C. was filed and the accused had admitted the authenticity of execution of the alleged power of attorney. As per the petitioner, the original signatures of the parties must be lying with the record before Tehsildar and as such, the application was filed to summon the record and the said application was declined by learned trial Court on the ground that concerned Clerk from the office of Sub Registrar was already examined and he could not be re-examined to prove the alleged power of attorney.

4. Learned Additional Sessions Judge, Amritsar vide order dated 5.11.2018 (Annexure P/9) dismissed the revision petition.

5. Learned counsel for the petitioner contended before this Court that both the Courts below have completely ignored the most important fact that the application was filed with the purpose so that the relevant facts must come on the file, but the Courts below passed the impugned orders

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without taking into consideration the said fact and dismissed the application.

6. Learned counsel for the petitioner further contended that as per provisions of Section 311 Cr.P.C., this Court has ample powers to summon any witness and examine him and as such the impugned orders, Annexure P/7 and P/9 are liable to be set-aside and relevant directions be issued to the Court below. On this point, reliance was placed on the decision of Hon`ble Supreme Court in **Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors., 2006 (2) R.C.R. (Criminal) 448.**

7. Having considered the submissions made by learned counsel for the petitioner and appraisal of the record, this Court is of the considered view that there is no ambiguity on the point that Section 311 of the Code of Criminal Procedure gives ample power to the Court to summon material witness or examine any person. For ready reference, Section 311 Cr.P.C. is being extracted here below:-

“311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”

8. The above section deals with two different aspects that the power has been vested with the Court and the Court has to use its discretionary power looking into the totality of the circumstances. Needless

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to mention that such a discretion is to be exercised judiciously.

9. Perusal of the record would reveal that learned Magistrate as well as learned Additional Sessions Judge, Amritsar in their detailed orders have given detailed reasons for rejection of the application. It is not disputed that the same witness, to whom the petitioner wants to examine again, was earlier examined before the Court during the trial along with record as PW-1, i.e. Mukesh Kumar, Additional HRC. At that time, he came with the record pertaining to registration of power of attorney dated 22.3.1995 executed by Kashmir Singh. Learned Courts below have already rightly observed that after recording of statement of PW-1 on 8.4.2013, no application was filed before the Court for production of document. The other reasons rightly prevailed upon the Courts below for passing the impugned orders under challenge are that if the petitioner wanted to compare the handwriting or the signatures, then an application could have been filed and the same would have been got compared with the document with the admitted signatures of Kashmir Singh by getting appointed some Handwriting Expert. Learned Courts below have rightly observed, on the basis of conduct of the parties before the trial Court, that the only purpose of the petitioner is to delay the proceedings of trial as he himself is an accused before the Court.

10. As per view taken by Hon`ble Apex Court in **Zahira Habibullah Sheikh's case (supra)**, Section 311 Cr.P.C. gives vast powers to the Court to summon any witness or to order for production of the record, but that power is to be exercised by the Courts while taking into consideration all the attending circumstances available before the Court

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and learned Magistrate has rightly exercised its discretion and the same does not call for any interference by this Court. More so, the revision filed by the petitioner against the said order dated 13.08.2018 (Annexure P/7) has already been dismissed by learned Additional Sessions Judge vide order dated 5.11.2018 (Annexure P/9) for the reasons detailed therein. As such, the impugned orders, dated 13.08.2018 (Annexure P/7) and 5.11.2018 (Annexure P/9) do not call for any interference by invoking jurisdiction under Section 482 Cr.P.C., as per view taken by Hon`ble Apex Court in **Zahira Habibullah Sheikh's case (supra)**.

11. In view of the above, the impugned orders, dated 13.08.2018 (Annexure P/7) and 5.11.2018 (Annexure P/9) do not suffer from any illegality or perversity, calling for interference by way of this petition and the present petition stands dismissed *in limine* being devoid of any merit.

(SHEKHER DHAWAN)
JUDGE

November 28, 2018

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes