

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

Crl. Rev. No.2267 of 2018

Date of Decision: 20.08.2018

Mana Ram and another

....Petitioners

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. J.S. Thind, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed against order dated 10.05.2018 passed by the Additional Sessions Judge, Sirsa, whereby, the application moved by the prosecution under Section 311 Cr.P.C for tendering certain documents and examination of Clerk from the Office of S.P Sirsa has been dismissed.

Briefly, the facts of the case, as made out in the present petition, are that petitioner No.1 is father of deceased Kheta Ram and petitioner No.2 is father of deceased Sandeep Kumar, who were murdered by the accused and they are facing trial in case FIR No.314 dated 30.09.2015 registered under Sections 148, 149, 364, 302 IPC and under Section 25 of the Arms Act at Police Station Ellenabad. However, during pendency of the proceedings before the trial Court, an application was moved by the prosecution for tendering certain documents and examination of Clerk from the Office of S.P Sirsa. It was mentioned in the application that the investigation was faulty and a complaint was made to S.P. Sirsa

as well as to SC/ST Commission, New Delhi on 28.10.2015. Certain documents were not collected by the police/Investigating Agency which were necessary for just decision of the case.

Learned counsel for the petitioners submits that just to bring the truth of faulty investigation, certain documents are necessary to be produced by way of examination of Clerk from the Office of S.P. Sirsa. Learned counsel also submits that three applications which were post-occurrence were moved and without considering the applications on merits, the same have been dismissed. Learned counsel also submits that an irreparable loss would be caused to the petitioners if the evidence is not allowed to be adduced and there is no other remedy available to them.

Heard the arguments of learned counsel for the petitioners and have also perused the impugned order dated 10.05.2018 passed on the application moved by the prosecution under Section 311 Cr.P.C. The application moved by the prosecution has been dismissed by the Additional Sessions Judge, Sirsa on the ground that the same was moved at the belated stage. The complainant was having an opportunity during investigation or after filing of challan against the accused person to move such application. It is also mentioned in the order that in the application, the allegations have been levelled against irresponsible investigation of the police officials. No complaint was made to the police against police officials and as such, the application was dismissed.

For resolving the issue involved in the present case, Section 311 of the Cr.P.C is relevant, which is reproduced as under :-

“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.”

As per said provisions of Section 311 Cr.P.C., the Court is empowered, at any stage of inquiry, trial or other proceeding, to summon any person as witness or to examine any person in attendance, who has not been summoned as witness or to recall or re-examine any person already examined, in case, it appears to the Court that his recalling or re-examination or summoning is necessary for just decision of the case.

In the present case, the prosecution has moved an application for tendering certain documents and examination of Clerk from the Office of S.P. Sirsa to show that the investigation was not made properly and certain complaints were made. Admittedly, no complaint was made by the petitioners to show that certain documents were necessary to be seen by the Investigating Officer during investigation. What is the relevancy of those documents, has not been mentioned in the application or during arguments raised by learned counsel for the petitioners. In the application, simply it has been mentioned that a request was sent to the Police Station and the same was received. The complaints were received in the Office of SHO and the petitioners met Deputy Superintendent of Police concerned who had sent them to SHO but the SHO refused to hand over the footage.

On perusal of application, it appears that a request was made to

the police authority and the SC/ST Commission that appropriate action be taken against the accused persons and CCTV footage be made available.

No doubt, the application under Section 311 Cr.P.C can be moved at any stage but it is to be seen as to how it is essential to the just decision of the case. The purpose is not to fill up the *lacuna* or some ulterior motive.

In the present case, neither any relevancy has been shown nor any purpose has been reflected in the application as to how the statement of the Clerk is relevant.

While considering the application under Section 311 Cr.P.C., the Court has to keep in mind not only the need for giving fair opportunity to the accused but also the need for ensuring that the victim of the crime is not unnecessarily harassed. Nothing has been mentioned as to how the petitioner is going to be prejudiced, in case, the application has been dismissed. Neither it has been made out as to how the production of documents and examination of Clerk of S.P Office, Sirsa is necessary nor it has been pointed out in the application as well as during arguments advanced by learned counsel for the petitioners as to how the petitioners are going to be prejudiced in not examining Clerk of S.P Office and non-production of complaints made by the petitioners.

Accordingly, I find no merit in the revision petition and the same, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)

JUDGE

20.08.2018

gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No