

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.34 of 2018
Decided on: 16.05.2018

Ahmed Hussain

....Petitioner

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ashish Gupta, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this revision petition is for setting-aside the order dated 14.12.2017 dismissing the application filed by the petitioner/accused under Section 311 Cr.P.C. for summoning 03 witnesses namely Sh. P.C. Gupta, Retd. Gurgaon Gramin Bank, Nuh, District Nuh at present resident of Pinangwan Tehsil Punhana, District Nuh, Sh. M.S. Dahiya, Field Officer, Gurgaon Gramin Bank, Nuh, District Nuh and Sh. Noman Ahmed, Advocate.

On 11.01.2018, while issuing notice of motion, the following order has been passed by this Court:-

“Prayer in this petition is for setting aside the order dated 14.12.2017 dismissing the application filed by the petitioner-accused under Section 311 Cr.P.C. for summoning three witnesses i.e. Manager and Field Officer, Gurugram Gramin Bank and one Advocate.

Counsel for the petitioner submits that the application under Section 311 Cr.P.C. moved by the prosecution on 18.04.2017 was allowed and one Patwari

was permitted to be examined. Counsel for the petitioner further submits that the petitioner has challenged the said order by way of filing a revision petition before the Court of Sessions, which was dismissed on 18.05.2017 and thereafter, he has availed his right of filing a quashing petition in this Court and the said petition was also dismissed on 29.11.2017 by observing that the statement of the said witness i.e. Patwari has already been recorded.

Counsel for the petitioner has further submitted that since the petitioner was availing his legal remedy against the order vide which the prosecution was allowed to lead additional evidence, the petitioner could not move this application in time and the trial Court has not taken into consideration that after the statement of Patwari was recorded by the prosecution in additional evidence, the petitioner was not granted any right to lead his defence. It is further submitted that the witnesses now sought to be examined are relevant for the reason that they have verified the documents submitted by the petitioner-accused but were not arrayed as witness by the prosecution.

Notice of motion for 18.04.2018.

In the meantime, passing of the final judgment shall remain stayed.”

Counsel for the petitioner has submitted that since the petitioner was availing his legal remedy challenging the order passed by the trial Court allowing the application under Section 311 Cr.P.C. filed by prosecution and during the pendency of the said petition, the statement of Patwari, which was allowed by the trial Court, vide order dated 18.04.2017, only thereafter, the petitioner moved an application to lead his defence evidence in the shape of rebuttal to the said witnesses. Counsel for the petitioner has further submitted that the trial

Court has passed the impugned order only on the ground that it has been filed just to delay the proceedings of the case and despite availing 08 opportunities, the petitioner/accused has not led his evidence in time.

Counsel for the State, on the other hand, has, however, opposed the submissions made by counsel for the petitioner on the ground that the application has been filed just to delay the proceedings of the case.

After hearing counsel for the parties, I find merit in the present petition. Admittedly, an application was filed by the prosecution under Section 311 Cr.P.C. to lead additional evidence to examine one Patwari, which was allowed on 18.04.2017 and, thereafter, the petitioner/accused challenged the said order before the Revisional Court which was dismissed on 18.05.2017 and, thereafter, he also filed one miscellaneous petition i.e. CRM-M No.26534 of 2017, before this Court, which was dismissed on 29.11.2017. The operative part of the order is reproduced below:-

“However, learned counsel for the petitioner has admitted that in pursuance to the impugned orders, the statement of PW-5 has already been re-recorded and the Jamabandi has already been marked as Mark-A.

After hearing learned counsel for the petitioner, I find no ground to interfere in the impugned orders. The witness PW-5, as a Patwari appeared for proving the relevant revenue documents i.e. Jamabandi for the year 2003-04. However, inadvertently, the Jamabandi which was exhibited by him was a different jamabandi produced on record along with the bail bonds by a surety. Therefore, there was an apparent mistake on record. Both the Courts

have run currently held that when this document was exhibited, it was not even signed by the Presiding Officer and therefore it is the state who brought this fact to the notice of the Court.

In view of the above, I find no illegality in the impugned orders passed by the Courts below allowing the application under Section 311 Cr.P.C.

No merit. Dismissed.”

Only after availing his legal remedy, the petitioner has moved the present application for summoning the aforesaid 03 witnesses in his defence. It is well settled principle of law that if an application for leading additional evidence is allowed, the other party/the accused has a right to rebut the same by leading his defence evidence.

In view of the above, this revision petition is allowed, the impugned order dated 14.12.2017 is set-aside and the petitioner is granted 02 effective opportunities to lead his evidence and examine the aforesaid 03 witnesses, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

16.05.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No