

Sr. No.128

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

CRM-M-2284-2019(O&M)

Date of decision:21.01.2019

Baldev Singh and another

.....Petitioners

versus

Jagroop Singh and another

.....Respondents

Coram: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present: Mr. G.S.Nagra, Advocate
for the petitioners.

Rajbir Sehrawat, J(Oral)

Present petition has been filed challenging the Order dated 12.11.2018(Annexure P-5) passed by the Additional Sessions Judge, Amritsar, whereby upholding the Order dated 12.07.2018(Annexure P-3) passed by the Judicial Magistrate Ist Class, Ajnala, the application filed by the Complainant for leading secondary evidence qua the affidavit in dispute has been upheld and the revision filed by the present petitioner was dismissed.

The brief facts which has given rise to the present petition are that the Complainant purchased share in property from successors-in-interest of Kartar Kaur. The land purchased by the Complainant had tubewell there on, with electric connection in the name of said Kartar Kaur. The Complainant had purchased the land alongwith the tubewell and the electric connection. However, when he confirmed the latest status regarding the electric connection, then it was found that the same was running in the name of petitioner No.1 Baldev Singh. Further allegation of the Complainant is that, after the death of Kartar Kaur, through impersonation by some other person as Kartar Kaur, the petitioner prepared a false

affidavit and got the electricity connection transferred in his name; in connivance with his co-accused.

At the stage of pre-charge evidence, the clerk of Punjab State Power Corporation Ltd., Sub Divisional Ajnala was examined by the Complainant. This witness had brought the record before the Court. However, in the statement made before the Court, this witness stated that the original of the affidavit dated 01.02.1990, on the basis of which electric connection was transferred in the name of the present petitioner, was missing from the concerned file of the Corporation. However, this witness deposed that the connection was, in fact, transferred in the name of the present petitioner on the basis of the affidavit.

The above said facts necessitated the filing of application for leading secondary evidence by the Complainant qua the above said affidavit.

The Trial Court allowed the application. However, aggrieved against the Order passed by the Trial Court, the present petitioner preferred revision petition before the Additional Sessions Judge, Amritsar. However, the said revision petition was also dismissed vide impugned Order dated 12.11.2018(Annexure P-5). That is how; the present petition has been filed by the petitioner, challenging the orders passed by the Courts below.

Having heard the learned counsel for the petitioners, this Court finds that the Order passed by the Courts below, by no means, are in violation of the law. The statement of the CW-1, the official of the Punjab State Power Corporation Ltd, has duly established the fact qua the existence and use of the said affidavit. However, the plea taken by the witness is that the said affidavit is no more available on the file of the Corporation.

In view of this situation, if the Complainant had the photocopy of the said affidavit and he has filed application praying for permission to lead the same in secondary evidence to substantiate his case, then it can not be said that his prayer is in violation of any law. Rather the opportunity to lead the secondary evidence qua the affidavit has become necessary for just decision of the case. Although the observation made by the Trial Court, that the original affidavit is in possession of the petitioner, may not be substantiated at this stage, however, the fact remains that the official witness of the Corporation have admitted that the original of the said affidavit was submitted to the Corporation at the time of transfer of the electric connection. As a result, the fact whether the original of the said affidavit is found to be in possession of the petitioner or it is found to have been submitted to the Corporation, which has subsequently gone missing, is a moot point. In either situation, the Complainant is entitled to lead the secondary evidence of the same. Hence this Court does not find any illegality in the order passed by the Courts below.

Otherwise also, the petitioners had already availed the remedy of revision before the Court below. The present petition is in the nature of the second revision, though filed by availing a different provision of law. However, the second revision is barred by Section 397 Cr.P.C. This Court has already dealt with the proposition regarding the maintainability of the petition under Section 482 Cr.P.C, after having availed the remedy of revision before the Courts below in a petition i.e. **CRM-M-30350-2018 titled as Sudesh and others vs. State of Haryana and another; decided on 02.08.2018**. The relevant paragraph is reproduced hereinbelow:-

“So far as the present petition is

concerned, this petition has been filed for invoking power of the High Court under Section 482 Cr.P.C. A bare perusal of Section 482 Cr.P.C shows that the power under Section 482 Cr.P.C can be invoked for three purposes, namely, for giving effect to the orders passed under this Court, for preventing the abuse of the process of the Court and to meet the ends of justice. In the present case, the prayer of the petitioners is not for giving any effect to any order passed by the Court. Therefore, the first eventuality prescribed under Section 482 Cr.P.C is not at all attracted. Still further, by any means, an order passed by a Court of competent jurisdiction and continuation thereof; cannot be branded as an abuse of the process of Court; unless it is alleged and shown to the High Court that the Courts below had acted for irrelevant reasons or for extraneous considerations. Needless to say that sufficiency of reasons is not to be gone into after the revisional Court. It is not even the allegation of the petitioners in this case that orders are passed by Court below; for irrelevant or extraneous considerations. So far as the third ingredient of Section 482 Cr.P.C is concerned, this Court is not supposed to go into 'legality' and 'propriety' of the order passed by the trial Court. Section 397(3) of Cr.P.C prohibits second revision by a party. Under Section 397(1), the Revisional Court is authorised to see 'legality' and 'propriety' of the order passed by the Court. Since second revision by the same party is prohibited under Section 397(3), therefore, any argument on 'legality' or 'propriety' of an order passed by the Court below, ordinarily, is not to be appreciated in proceedings under Section 482 Cr.P.C, unless it is shown, at the macro level, that such an order has

resulted from considerations which were totally alien to the process of the Court or have produced incomprehensibly absurd result and, therefore, have resulted in defeating the ends of justice itself. What cannot be done directly, cannot be done indirectly as well. In the present case, except to argue for re-appreciation of the material before the trial Court, there is not even a submission or an allegation regarding any aberration in the process adopted by the Courts for passing the impugned orders. Therefore, power under Section 482 Cr.P.C cannot be exercised by this Court to re-appreciate the same material, which was available before the Courts below and which have been duly appreciated by the Courts below.”

In the present case, as mentioned above, this Court has not found even any illegality, much less to speak of the courts acting in a manner which is totally alien to the process of law. Therefore, otherwise also, the present petition is not maintainable.

Dismissed.

21st January, 2019

Shivani Kaushik

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned *Yes*

Whether Reportable *Yes*