

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-1448 of 2019

Date of Decision: January 15, 2019

Mani Yadav

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. G.C. Shahpuri, Advocate for the petitioner

Sudhir Mittal, J. (Oral)

The petitioner challenges order dated 22.10.2018 (Annexure P-3) whereby the learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri has rejected his application under Section 311 Cr.P.C.

FIR No. 443 dated 21.08.2013 was registered at Police Station City Yamuna Nagar, District Yamuna Nagar under Sections 323, 324, 326, 341 and 506 IPC on the complaint of one Jitender Kumar son of Gulshan Kumar. During the course of the trial, the petitioner was cited as PW and he deposed in favour of the prosecution. Subsequently, an application dated 22.10.2018 (Annexure P-2) was filed under Section 311 Cr.P.C. seeking permission for his re-examination on the ground that he had been coerced by the complainant to depose in his favour. The said application has been rejected by the impugned order dated 22.10.2018.

The impugned order records that evidence was closed on 04.09.2018 and under Section 313 Cr.P.C. statement of the accused was recorded on 26.09.2018. The application is belated and the ground that the petitioner was pressurized by the complainant appears to be false as the petitioner and the complainant were still confined in the same jail as was the position on the date of his cross-examination.

Learned counsel for the petitioner submits that infact the petitioner had

application under Section 311 Cr.P.C. can be filed at any stage and, thus, the impugned order is illegal and is liable to be set aside. Reliance is placed on judgment passed by this Court in ***Khatta Singh vs. C.B.O. Chandigarh and others, 2018(3) RCR(Criminal) 708.***

The power of the Court under Section 311 Cr.P.C. is very wide and discretionary in nature. The same may be exercised at any time before passing of the judgment, if the facts and circumstances of the case so require. Thus, whether an application under Section 311 Cr.P.C. has to be allowed or not would depend upon the facts and circumstances of a particular case. This has been laid down in ***Khatta Singh's case (supra)*** as well. However, the said judgment is distinguishable on facts. In ***Khatta Singh's case (supra)***, the accused was Baba Gurmeet Ram Rahim Singh of Dera Sacha Sauda. The persons who had attempted to go against his dictate had been eliminated and, therefore, this Court came to the conclusion that the petitioner was under real threat on the date of recording of his statement. Such is not the position in this case. Neither the complainant is powerful like the accused in ***Khatta Singh's case (supra)*** nor any instances have been quoted which may have led to the petitioner to fear for his life. A bald statement that he had earlier deposed under threat is not sufficient. In case such a statement was to be accepted trial in every criminal case would get derailed because the accused himself win over a prosecution witness at a later stage and seeks re-examination of the said witness on the grounds of threat. The impugned order is self speaking and a perusal thereof shows that the trial Court has exercised its discretion in a judicious manner. The same does not require any interference.

The petition is, accordingly, dismissed.

January 15, 2019

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No