

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Misc.-M No.10155 of 2014
Date of Decision: October 31, 2019

Chander Pal & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. K.S.Dhaliwal, Advocate,
for the petitioners.

Mr. Sukhdeep Parmar, DAG, Haryana.

Mr. S.S.Dinarpur, Advocate,
for respondent No.2-complainant.

MANOJ BAJAJ, J.

Through this petition filed under Section 482 Code of Criminal Procedure, petitioners have sought quashing of the impugned order dated 12.03.2014 (Annexure P-3) passed by the Appellate Court, whereby the applications dated 06.02.2014 (Annexure P-1) and dated 10.02.2014 (Annexure P-2) filed by them respectively under Section 391 Cr.P.C. for additional evidence, have been dismissed.

Mr. K.S.Dhaliwal, learned counsel for the petitioners has submitted that Respondent No.2-complainant filed a false complaint against the petitioners before the Judicial Magistrate, Kurukshetra alleging that he was wrongly arrested from his house on 15.10.2002 at 7.30 AM and beaten up by the accused at Police Station Ladwa. Complainant was accused in case FIR No.349 dated 15.10.2002, under Sections 147, 148, 149, 188, 283,

332, 353, 341, 427, 436, 506, 120-B IPC and Sections 3 and 4 of Public Property Act, 1984, Police Station, Shahabad. The petitioners along with other persons were summoned to face trial. They were charge sheeted under Sections 323/342/506 read with Section 34 IPC. The trial Court, vide its judgment dated 18.11.2013, convicted the petitioners and sentenced them. Aggrieved against the same, they preferred an appeal before the Additional Sessions Judge, Kurukshetra which is pending adjudication.

Through the application under Section 391 Cr.P.C., petitioner No.1 wishes to examine the following witnesses:-

- a) Shri Anil Kumar Dhawan, now posted as Superintendent of Police, Mewat, along with zimni report No.1-A dated 15.10.2002, in F.I.R. No.349 dated 15.10.2002, under Sections 147, 148, 283, 332, 341, 427, 436, 508, 120-B of Indian Penal Code, 1860 in the case 'State Vs. Gurnam Singh and others'.
- b) Shri Balbir Singh, the then D.S.P., Shahabad, District Kurukshetra.
- c) Parveen Kumar, Head Constable (since retired) son of Shri Ami Chand, resident of Ward No.6, Naraingarh, District Ambala.

Similarly, petitioner No.2 through the application under Section 391 Cr.P.C, wants to produce the following documents:-

- i) Certified copy of personal search memo dated 15.10.2002 of Maya Ram and Gurnam Singh.
- ii) Certified copy of application dated 21.08.2003.
- iii) Certified copy of application dated 23.11.2002.
- iv) Certified copy of order dated 19.08.2005.

Petitioner No.1 in his application, has pleaded that the requisite evidence now sought to be adduced was already given to the counsel representing him before the trial court, however, the same was neither produced nor proved before the trial Court.

On 05.03.2014, notice of motion was issued and it was ordered that the appeal be not finally decided.

In response to the notice, reply of Shital Singh, Deputy Superintendent of Police, Shahabad on behalf of respondent No.1 was filed stating therein that the applications of the petitioners for leading additional defence evidence were dismissed after obtaining reply of respondent No.2-complainant and respondent No.1 has nothing to do with the aforementioned case as it was not a party in the private complaint or appeal.

On the contrary, Mr.S.S.Dinarpur, learned counsel for respondent No.2-complainant supported the impugned order and argued that the additional evidence, which, the petitioners now wish to adduce at the appellate stage, was within their knowledge, during trial and, thus, prayed for dismissal of the petition.

After hearing the learned counsel for the parties, this Court finds that the alleged occurrence took place in the year 2002 when the complainant was arrested on 15.10.2002. The evidence sought to be adduced by petitioner No.1 pertained to the documents in case FIR No.349 dated 15.10.2002. He has desired to examine Balbir Singh, the then DSP and Parveen Kumar, Head Constable as his defence witnesses. It may be noticed here that the prosecution against the complainant was withdrawn by the State on 19.08.2005, thus, proceedings were well within the knowledge of petitioner No.1 and it is not worth believing that the documents were given to the counsel, who failed to produce it before the trial Court. As after recording the statements of accused under Section 313 Cr.P.C., it was for the accused to adduce his defence evidence. At that stage, the accused could have expressed his willingness to adduce his evidence. There is no

explanation given as to why the defence evidence was not adduced. Similarly, the documents sought to be adduced by petitioner No.2 also pertained to the said FIR and the trial Court has observed that some of those documents have already been produced in evidence by complainant on record. A perusal of the impugned order reveals that the same is based upon the correct appreciation of material on record and the law on the subject and it does not warrant any interference by this Court.

Petition stands dismissed.

October 31, 2019
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No