

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

**CRM-M-9618-2019 (O&M)
Date of Decision: 01.03.2019**

Sanjeev Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr.R.N.Lohan, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

By filing this petition under Section 482 of the Code of Criminal Procedure, the petitioner-complainant has sought quashing of order dated 20.09.2018 (Annexure P-2) passed by Judicial Magistrate Ist Class, Gurugram, whereby, his application under Section 311 CrPC for summoning of PW2 Devi Charan for re-examination, was dismissed. He has also challenged the order dated 06.02.2019 (Annexure P-4), whereby, his revision against the aforesaid order has been dismissed by the Sessions Judge, Gurugram.

The petitioner is complainant in case FIR No.269 dated 27.11.2012 under sections 447/511/34 IPC registered at P.S. Palam Vihar, Gurgaon. The allegation in the FIR is that the complainant is the owner in possession of the suit property and the accused persons attempted to forcibly take its possession on 27.11.2012.

The petitioner moved an application dated 1.9.2016 under

Section 311 CrPC to re-examine PW2 ASI Devi Charan. It was his case that prior to the incident of 27.11.2012, the accused Vinod had attempted to take forcible possession of the suit property on 10.10.2012. Regarding this, a call at Police Control Room No. '100' was made by the complainant. On 30.5.2013, the mother-in-law of the complainant Smt. Shanta Kalra, who is also co-owner of the suit property, filed an application under the Right to Information Act before APIO, Gurgaon Police seeking information regarding the incident dated 10.10.2012. In response to the application, the APIO, Gurgaon Police provided details of the PCR calls received in the Gurgaon Police Control Room along with the incident report by ASI Devi Charan, which confirms the fact that the accused initially attempted to take possession of plot No.T-213. But the owner of the said plot arrived. The accused left the site of T-213 and attempted to take possession of T-215 which is the plot of the complainant. Inadvertently, these documents could not be put to PW2 ASI Devi Charan during his examination in court. Nor were these documents mentioned in the challan filed in the case. PW2 was sought to be recalled for examination so that these essential documents could be put to him.

The learned Trial Court while noticing that the power under Section 311 CrPC can be invoked at any stage of the inquiry or trial to recall or re-examine any witness for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case, held that in the present case no justifiable ground was made out by the petitioner to invoke the said provision. The learned Trial Court held that the documents pertaining to the alleged criminal tress-pass by the accused on the property

of the complainant on 10.10.2012 were not material for the adjudication of the present case. It was noticed that the charges against the accused for criminally tress-passing into the property of the complainant on 27.11.2012 were framed on 20.9.2013. The alleged incident of 10.10.2012 has no connection with the present FIR. Even if the said documents are allowed to be produced and proved, the accused cannot be convicted for commission of the alleged tress-pass on 10.10.2012 as no charges have been framed against the accused in regard to that incident. It was also noticed that after the framing of the charges vide order dated 20.9.2013 the complainant made no efforts for producing the said documents till the stage of examination of DWs. PW2 ASI Devi Charan was examined on 30.10.2015 whereas the application was moved on 1.9.2016. It was thereby concluded that the complainant was trying to misuse the provision of Section 311 CrPC to prolong the trial. Accordingly, the application was dismissed.

The learned Sessions Judge while dismissing the revision filed by the petitioner noticed that the prayer for additional evidence is based on documents and evidence which were not a part of the charge-sheet and were never given to the Investigating Officer during the investigation. Nor was it otherwise investigated by the Investigating Officer. The information which the petitioner intends to place on record had been obtained by him in the year 2013 but he never handed over those documents to the Investigating Officer. Nor did he in his complaint for registering FIR on 27.11.2012 mention the earlier incident of 10.10.2012. Even when he stepped into the witness box, he did not depose regarding the alleged incident. This fact is all the more relevant as the petitioner is working in Delhi Police in the rank of

Inspector since 1996. It was noticed that from 20.9.2013 when the charges were framed till 3.8.2016 when the prosecution evidence was closed, the matter was adjourned for prosecution evidence about 35 times. At no point in time did the petitioner bother to place on record the documents which he now wishes to place on record. The court thereby concluded that the intention of the petitioner appears to be to delay the trial and harass the respondents. Accordingly, the revision was dismissed.

Both the courts below have rightly come to the conclusion that the documents relating to the earlier incident of 10.10.2012 would not be relevant for proving the charges in the present case. Moreover, prior to moving the application, the petitioner at no stage made any effort to produce the said documents of which he admittedly was in possession of since 2013. The petitioner had ample opportunity to produce the same till the prosecution evidence was closed on 3.8.2016. The courts below have rightly concluded that the effort of the petitioner appears to be to merely delay the trial. There appears to be no illegality in the impugned orders.

Accordingly, this petition is dismissed.

March 01, 2019

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(**HARINDER SINGH SIDHU**)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No