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

**CRM-M-17536-2016
Date of decision-20.05.2019**

Baljinder Kaur

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. S.S.Rangi, Advocate for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Bhupinder Ghai, Advocate for respondent No.2.

MANOJ BAJAJ, J. (Oral)

Petitioner-Baljinder Kaur has filed this petition under Section 482 Cr.PC for challenging the Revisional Court order dated 01.03.2016, whereby it has affirmed the order dated 21.12.2015 passed by the trial Court, whereby application under Section 311 Cr.P.C filed by the petitioner (complainant) seeking permission to adduce the evidence of hand-writing and finger print expert and for summoning the official of the Court of Civil Judge (Junior Division), Fatehgarh Sahib as a witness was dismissed.

The facts in brief leading to the petition are that a case FIR No.139 dated 30.12.2008 was got registered by complainant (petitioner) for the offences punishable under Sections 419, 420, 465, 467, 471 and 120-B of Indian Penal Code. The copy of the complaint (Annexure P-1) is on

record wherein it was alleged that the father of the complainant died in the year 1997 and after his shifting to USA, the accused by impersonation got the mutation of the said property sanctioned in their name, thereby causing wrongful loss to the petitioner/complainant.

After commencement of the trial, the evidence was adduced by prosecution. It is the case of the petitioner that simultaneously a civil suit was also brought to challenge the alleged Will dated 01.02.1975 and an agreement of exchange dated 05.08.2006 between the parties. In the said civil suit the finger print expert was examined to prove the signatures of complainant-Baljinder Kaur before trial Court. According to the learned counsel, this material was sought to be adduced in evidence through application under Section 311 Cr.P.C. After examining the application, the trial Court proceeded to dismiss the same on the ground that it has been filed after recording of the statement of accused under Section 313 Cr.P.C. Besides, it was held that the said witness was not cited in the list of prosecution witnesses. The said application was dismissed on 21.12.2015. The said order was carried in revision and the revisional Court also upheld the order passed by the trial Court.

Learned counsel for the parties have been heard and with their assistance, I have gone through the case file.

Learned counsel for the petitioner contends that the issue raised in the criminal case is identical to the issue raised in the civil suit. During the course of the arguments, it is not disputed by learned counsel appearing on behalf of the respondents that the civil suit No.140RT of

09.04.2009/30.05.2014 (Annexure P-4) stands decreed against the accused persons and the appeal filed by them had also failed. It is apparent that the decree was passed on 16.02.2015 whereas the application was dismissed on 21.12.2015. Learned counsel for the petitioner contends that the Court has proceeded to dismiss the application without even considering the relevance of the evidence. According to him, the Court has failed to exercise the jurisdiction vested in it.

On the other hand, application is opposed by the learned counsel appearing on behalf of the accused on the ground that it is the prosecution which has to stand on its own legs. The evidence before the Civil Court may not be relevant in this case. It is pointed out that the charges were framed on 08.12.2009 whereas the application was filed after a long gap i.e. approximately after five years. He has supported the impugned order to contend that the same has been passed by the trial Court on proper appreciation of material on record.

After hearing learned counsel for the petitioner, this Court is of the opinion that once on the same subject, decree has been suffered by the accused person, the same may be relevant for proper adjudication of the criminal case. A perusal of the impugned order reveals that the Court has simply noticed the relevant stages regarding the FIR, filing of challan and framing of charges, but has not at all discussed the relevance of the evidence sought to be adduced through application under Section 311 Cr.P.C. At the same time, in case the application is allowed, no prejudice would be caused to the accused, who shall be given an opportunity to cross examine the

witnesses and rebut the same by adducing the defence evidence as well.

Though the revision against the trial Court order was not maintainable being interlocutory order, however, revisional Court has proceeded to dismiss the revision on merits by reiterating the reasoning given by the trial Court, and upheld the order dated 21.12.2015.

In view of the above, impugned order dated 01.03.2016 is set aside and application under Section 311 Cr.P.C filed by the petitioner (complainant) seeking permission to adduce the evidence of hand-writing and finger print expert and for summoning the official of the Court of Civil Judge (Junior Division), Fatehgarh Sahib as a witness is allowed.

Petition is allowed.

(MANOJ BAJAJ)
JUDGE

20.05.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No