

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-21511-2018

Date of decision: April 24, 2019

Sudesh Kumari

....Petitioner

Versus

Union Territory of Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Ashwani Talwar, Advocate and
Mr. Lalit Kumar, Advocate
for the petitioner.

Mr. Rajeev Anand, AAP, U.T., Chandigarh.

Ms.Pushpinder Kaushal, Advocate
for respondents No.2 and 3.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 4.6.2016 passed by the trial Court dismissing the application under Section 311 Cr.P.C. filed by the petitioner-complainant in case FIR No.139 dated 9.9.2011 under Sections 420/468, 468/471, 120-B IPC registered at Police Station Sector 17, Chandigarh as well as the judgment dated 6.3.2018 passed by the revisional Court dismissing the revision filed by the petitioner.

Brief facts of the case are that the petitioner got the FIR registered against the respondent-accused on the allegations that accused-Mohit Jindal and Hari Ram Jindal has destroyed the evidence of marriage and have filed false affidavit by appending forged signatures in the name of the complainant. The respondent No.2 was in relationship with the

complainant-petitioner and they performed marriage which was witnessed by father of respondent No.2 but, later on, the marriage was not accepted. When the complainant approached the office of Arya Samaj Mission on 1.12.2009, the same was supplied on the intervention of the police. Later on, when again, the petitioner visited the office of Arya Samaj Mission on 1.10.2010, she came to know that both, respondents No. 2 and 3, along with some other persons visited the Arya Samaj Mission on 27.11.2009 and two affidavits in English and two in Hindi were filed informing dissolution of the marriage with the consent of the parties though no such affidavit was signed by the petitioner. On these allegations, the FIR was registered.

During the period when the prosecution evidence was going on, the petitioner moved an application under Section 311 Cr.P.C. for leading additional evidence and to produced certain documents on record. The trial Court dismissed the application vide impugned order dated 4.6.2016. Thereafter, the petitioner preferred a revision which was also dismissed vide impugned order dated 6.3.2018.

Counsel for the petitioner submits that the proposed additional evidence is a documentary evidence which the petitioner wants to produce at the time of recording her statement as the case is still at the stage of recording of the prosecution evidence and the evidence of the petitioner is not concluded. It is further stated that in another FIR No.21 dated 30.4.2012 got registered by the petitioner under Sections 498-A, 506, 120-B IPC at Police Station Division No.3, Ludhiana, the respondent No.2 has been convicted for a period of one year under Section 498-A IPC vide judgment

dated 31.1.2017 passed by Judicial Magistrate 1st Class, Ludhiana. Counsel submits that during the pendency of the trial, the petitioner has produced on record all the aforesaid documents, which is now part of the application under Section 311 Cr.P.C. in the present case and, therefore, these documents are not new documents. Counsel has further submitted that all the documents are certified copies and the petitioner along with documents placed on the record wants to lead the evidence to prove the case under Section 55 of the Evidence Act.

Counsel for the petitioner has further argued that initially, the complaint was given in Ludhiana, however, considering the jurisdiction part, the office of the Commissioner of Police, Ludhiana transferred the complaint of the petitioner on 15.11.2010 to Superintendent of Police, Chandigarh, along with 238 pages, which include the proposed additional evidence. However, when the FIR was registered at Chandigarh, investigation was conducted, the aforesaid documents were not made as part of the challan submitted by the police and, therefore, these are relevant documents. Counsel for the petitioner has also submitted that the evidence which goes to the root of the case should be allowed for the just and fair decision of the case.

Counsel for the petitioner has relied upon Natasha Singh Vs. CBI (State), 2013(3) RCR (Criminal) 368 _wherein the Hon'ble Supreme Court has held as under :-

“17. The Trial Court, while entertaining the application filed under Section 311 Cr.P.C., had asked the appellant

to provide a brief summary of the nature of evidence that would be provided by the defence witnesses mentioned in the application, and in keeping with this, the appellant had furnished an application stating that the appellant wished to examine one Shri B.B. Sharma who was one of the panchnama witnesses, and who the prosecution had neither listed nor examined in court. Therefore, the appellant wished to examine him in defence. The second person was Shri S.S. Batra, Company Secretary of the appellant, as he was the best person to provide greater details of the company of which the appellant is the Director. The third witness was a hand-writing expert, and it was necessary for the defence to examine him regarding the correctness of the signatures of the appellant and others, particularly with respect to the signatures of the appellant.

18. Undoubtedly, an application filed under Section 311Cr.P.C. must be allowed if fresh evidence is being produced to facilitate a just decision, however, in the instant case, the learned Trial Court prejudged the evidence of the witness sought to be examined by the appellant, and thereby cause grave and material prejudice to the appellant as regards her defence, which tantamounts to a flagrant violation of the principles of law governing the production of such evidence in keeping with the provisions of Section 311 Cr.P.C. By doing so, the Trial Court reached the conclusion that the production of such evidence by the defence was not essential to facilitate a just decision of the case. Such an assumption is wholly misconceived, and is not tenable in law as the accused has every right to adduce evidence in rebuttal of the evidence brought on record by the prosecution. The court must examine whether such

additional evidence is necessary to facilitate a just and proper decision of the case. The examination of the hand-writing expert may therefore be necessary to rebut the evidence of Rabi Lal Thapa (PW.40), and a request made for his examination ought not to have been rejected on the sole ground that the opinion of the hand-writing expert would not be conclusive. In such a situation, the only issue that ought to have been considered by the courts below, is whether the evidence proposed to be adduced was relevant or not. Identical is the position regarding the panchnama witness, and the court is justified in weighing evidence, only and only once the same has been laid before it and brought on record. Mr. B.B. Sharma, thus, may be in a position to depose with respect to whether the documents alleged to have been found, or to have been seized, were actually recovered or not, and therefore, from the point of view of the appellant, his examination might prove to be essential and imperative for facilitating a just decision of the case.”

Counsel for the petitioner has further relied upon **Mohan Lal Shamji Soni Vs. Union of India**, 1991(3) RCR (Criminal) 182, wherein a similar view has been taken:-

“10. It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court to prove a fact or the points in issue. But it is left either for the prosecution or for the defence to establish its respective case by adducing the best available evidence and the Court is not empowered under the provisions of the Code to compel either the prosecution or the defence to examine any particular witness or

witnesses on their sides. Nonetheless if either of the parties with-holds any evidence which could be produced and which, if produced, be unfavourable to the party withholding such evidence, the court can draw a presumption under illustration (g) to Section 114 of the Evidence Act. In such a situation a question that arises for consideration is whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice? It is a well accepted and settled principle that a Court must discharge its statutory functions-whether discretionary or obligatory-according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, the salutary provisions of Section 540 of the Code (Section 311 of the New Code) are enacted whereunder any Court by exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate,, inconclusive and speculative presentation of facts, the ends of justice would be defeated.”

In reply, the counsel for the respondent has stated that in the

application filed by the petitioner under Section 311 Cr.P.C. no specific reason has been assigned in not producing the evidence at the initial stage. The counsel for the respondent argued that the FIR was registered on 9.9.2011, report under Section 173 Cr.P.C. was submitted on 2.11.2012 and the application under Section 311 Cr.P.C. was filed on 28.7.2017, i.e. after a much delay and the petitioner never prayed for further investigation in terms of Section 173(8) Cr.P.C., if the police has not collected entire evidence. Counsel has further argued that the documents are not admissible in evidence.

Counsel for the respondent has relied upon Vindyawashini Prasad @ Vindya Washini Prasad Verma Vs. Shashi Kant Verma and another, 2002(1) PLJR 236, wherein the Patna High Court has held that it is beyond the scope of Section 311 Cr.P.C. to produce any documents as the scope is only to examine a witness or a person in attendance or to recall and re-examine any person.

After hearing counsel for the parties, I find merit in the present petition.

Judgment passed in Vindyawashini Prasad's case (*supra*) relied upon by the respondent is not applicable in the present case as it is case of the petitioner that the recording of statement of the complainant is not concluded and he want to prove these documents while deposing as her own witness and, therefore, it cannot be held that only the documents are to be produced, as these are to be proved by the petitioner while appearing as her own witness.

A perusal of the communication dated 17.10.2010 (Annexure P-7) from the office of the Commissioner of Police, Ludhiana it is clear that the incident had occurred in Chandigarh, therefore, vide further communication dated 15.11.2010 (Annexure P-8), the Commissioner of Police, Ludhiana has transferred the investigation to the Superintendent of Police, Chandigarh and only, thereafter the present FIR was registered.

A perusal of this letter further show that the enquiry report alongwith the opinion of the Deputy D.A. (Legal), which consisted of total 238 pages was sent by the Commissioner of Police, Ludhiana to the Superintendent of Police, Chandigarh, however, in the report submitted under Section 173 Cr.P.C., the documents which are now sought to be proved by the complainant as an additional evidence, though were part of the enquiry report, yet were not made part of the challan submitted under Section 173 Cr.P.C.

Even otherwise, a perusal of these documents further show that the same were already produced in another FIR No.21 dated 30.4.2012 wherein the respondent No.2 was convicted under Section 498-A IPC vide judgment dated 31.1.219. Therefore, these documents are not new to the parties and being part of the enquiry report submitted by the Commissioner of Police, Ludhiana, are relevant documents which will enable the trial Court to come to a logic conclusion and are necessary to be placed on record in the interest of justice.

In view of the judgment of the Hon'ble Supreme Court in

Natasha Singh's case (supra), the present application deserves to be allowed to facilitate the just and fair decision. Therefore, the impugned orders of the Courts below while dismissing the application only on the ground of delay in filing of the application, are not sustainable.

It is not disputed by the respondent that the recording of the statement of the complainant is not completed before the trial Court and in her statement she can prove all these documents which are already part of the judicial file in FIR No.21 dated 30.4.2012. Therefore, even on this count it cannot be held that there is delay in filing of the application as the evidence of the prosecution is still going on.

Resultantly, the present petition is allowed, impugned orders passed by the Courts below dated 4.6.2016 and 6.3.2018 are set aside and the application filed by the petitioner for leading additional evidence is allowed. The petitioner-complainant is permitted to produce on record the additional evidence while recording her statement by granting an effective opportunity.

The parties are directed to appear before the trial Court on or before 24.5.2019.

The petition stands disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

April 24, 2019
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Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No