

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

**CRM-M No.22916 of 2018 (O&M)
Date of Decision : 08.03.2019**

Rajbir Singh

..... Petitioner

versus

State of Haryana & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. R.K.Bawal, Advocate
for the petitioner.

Mr. Himmat Singh, DAG, Haryana.

Mr. Subhash Rana, Advocate
for respondent No.2-complainant.

AJAY TEWARI, J. (Oral)

This petition has been filed under Section 482 Cr.P.C. for setting aside the impugned order dated 05.04.2018 passed by the Judicial Magistrate First Class, Panipat in FIR No.43 dated 31.01.2015 registered under Sections 420/506 IPC at P.S. Sadar Panipat whereby the JMFC has dismissed the application of the petitioner-complainant under Section 311 of Cr.P.C. By this application the petitioner-complainant had prayed for calling some more witnesses. It was the case of the petitioner that at one stage both the parties had been summoned to the police station to settle the dispute and at that occasion, the respondent No.2 had admitted that he had to pay a sum of Rs.20.00 lakhs to the petitioner and that voluntary statement was captured on a C.D. and he wanted to summon those police officials who were present at that time to prove that fact.

The trial Court rejected it on the ground that there was no reference to the C.D. in the challan and that is why the present petition has been filed.

Counsel for the petitioner has argued that in the FIR there was a specific reference to this and the mere omission to mention this fact in the challan is an irregularity and the course of substantial justice can not be throttled only because the prosecution has made an error in not mentioning all the facts in the challan, and it is only because of this negligence of the prosecution that the complainant filed this application, and that too during the period when the prosecution evidence was going on.

Learned Deputy Advocate General on instructions from ASI Surender Singh and counsel for respondent No.2 have not been able to dispute these factual assertions and once these assertions are accepted, in my opinion, the trial Court should have allowed the production of those witnesses.

Today, the counsel for the petitioner states that he just wants to summon ASI Kanhaya Lal and HC Rajesh who had filmed the C.D.

Consequently, the petition is allowed and impugned order dated 05.04.2018 is quashed and the petitioner is allowed to summon ASI Kanhaya Lal and HC Rajesh.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

08.03.2019
pooja sharma-I

(AJAY TEWARI)
JUDGE