

CRM-M-24661-2017

Date of Decision : July 05, 2019

Sanjay Verma

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present : Mr. A.P.S. Deol, Senior Advocate with
Mr. Vishal R. Lamba, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Parminder Walia, Advocate
for respondent No.2.**Arvind Singh Sangwan, J. (Oral)**

Prayer made in this petition is for setting aside the order dated 24.5.2017 (Annexure P-5) vide which the trial Court has allowed the application filed by the complainant under Section 311 Cr.P.C. for summoning Inder Singh Kundu, DSP (Retired) as a necessary witness in FIR No.132 dated 23.3.2010 registered under Sections 195/511 read with Section 120-B IPC at Police Station Civil Lines, Hisar.

Learned senior counsel for the petitioner has submitted that as per the allegations in the FIR, the complainant and his family members are accused in FIR No.165 dated 25.12.2009 under Sections 148, 149, 323, 325 IPC in which, later on, Section 307 IPC was added. It is further stated in this complaint that this case was registered in connivance with the officials of Sapra Hospital, Hisar as a fake medical certificate was prepared.

The complainant in his application has stated that an enquiry was conducted with regard to the doctor and the other officials of the hospital by PW10 Inspector Surat Chawla, on an application given by him which was forwarded by the DSP, Hisar to the SHO, Police Station Civil Lines, Hisar for taking further action and investigation.

After the trial Court recorded prosecution evidence, the complainant filed an application under Section 311 Cr.P.C.

Learned senior counsel has further submitted that after the investigation was completed by the SHO, while submitting report under Section 173 Cr.P.C. the said DSP was never cited as a witness. He has further argued that the challan in this case was presented on 2.4.2013 and the charges were framed on 25.7.2013 and, thereafter, the prosecution evidence started, however, till 2016, no prosecution evidence was led. Learned senior counsel has further argued that while filing this application under Section 311 Cr.P.C., the only allegation is that Inder Singh Kundu, DSP is a necessary witness without defining any role and the proposed evidence which he can produce on record, before the trial Court while appearing as an additional witness.

Learned senior counsel for the petitioner has further argued that in reply to this application, a specific stand was taken that PW10 Surat Chawla, Investigating Officer/SHO, Police Station Civil Lines, Hisar had made an endorsement Ex.P-105 on the application Ex. P1, which was given by the complainant to the DSP and was forwarded to the SHO and in those proceedings, there is no mention that the DSP was a member of the raiding

party or was present at that time. It is further stated in reply that he is neither an attesting witness of any of the memos. prepared at the spot nor his statement was recorded under Section 161 Cr.P.C. during the investigation of the case and, therefore, he is not a relevant witness. Learned Senior counsel has further submitted that it was also stated in the reply that the complainant while appearing as PW1 has improved his version while deposing that the said DSP was a member of the raiding party, without any supporting evidence. Learned senior counsel has referred to the statement of PW10 Inspector Surat Chawla, SHO, wherein, he has specifically stated that the complainant Hardeep Singh (PW1) had handed over an application duly marked by the DSP and on receiving of the application Ex.P1, a raiding party consisting of EASI Balbir Singh and two officials alongwith Hardeep Singh and his brother was made and, thereafter, the raid was conducted.

Learned senior counsel has, thus, argued that all these facts were not noticed by the trial Court and without recording a finding that the summoning of the DSP as an additional witness is required, the impugned order was passed. He has further argued that while passing the impugned order, the trial Court has just observed that the recording of the statement of the DSP is essential for the just decision of the case and no prejudice will be caused to the accused without recording such statement.

Learned senior counsel has referred 2016(4) RCR (Criminal) 154 **State of Haryana Vs. Ram Mehar and others**, wherein Hon'ble the Supreme Court held that while allowing an application under Section 311 Cr.P.C. the Court must satisfy itself that it was in every respect essential to

examine a witness or recall him for further examination, in order to arrive at a just decision of the case.

Learned State counsel, on instructions from SI Balwan Singh could not dispute this fact on the basis of the record that during the raid conducted by PW10 Surat Chawla, the DSP was not a member of party and he had not signed any document/memo prepared at the spot and even his statement under Section 161 Cr.P.C. was not recorded during investigation. It is admitted that he was not cited as a witness while submitted a report under Section 173(2) Cr.P.C.

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

As the objections raised by the petitioner in the reply to the application under Section 311 Cr.P.C. have not been dealt with by the trial Court, I deem it appropriate to set aside the impugned order and remand the case back to the trial to pass a fresh order after considering the pros and cons of the case and recording a finding in light of judgment of Hon'ble the Supreme Court in Ram Mehar's case (supra).

The parties are directed to appear before the trial Court on 6.8.2019.

The petition stands disposed of, accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

July 05, 2019
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Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO