

118

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-15041-2019

Date of decision-02.04.2019

Mohini Singh

....Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Pushpinder Kaushal, Advocate for the petitioner.

MANOJ BAJAJ, J.

Complainant-Mohini Singh has challenged the order dated 26.02.2019 (Annexure P-5) passed by Additional Chief Judicial Magistrate, Panchkula whereby her application dated 30.01.2019 under Section 311 Cr.P.C (Annexure P-2) in case FIR No.81 dated 17.03.2015 registered under Sections 420 and 120-B of Indian Penal Code at Police Station Sector-5, Panchkula stands dismissed.

Learned counsel for the petitioner has been heard and with his assistance I have gone through the case file.

As per the complainant, the FIR was lodged on the allegations that accused Nos.1 and 2 namely, Ashwani Kumar Syal and Rajan Khurana have defrauded the complainant and caused loss of more than Rs. 60 lakhs. According to her, accused No.1 entered into an agreement to sell for purchase of Second Floor of House No.324-A, Sector-7, Panchkula on 01.02.2012, which was signed by accused No.2 as witness. A sum of Rs.25

lakh was paid as earnest money and the date for registration of the sale deed was fixed as 31.07.2012. On the said date, complainant allegedly at the inducement of the accused entered into an oral agreement for sale of first floor of the same house as well and paid another sum of Rs.30 lakhs as earnest money. It was further stated that FIR No.69 dated 15.02.2013 at Police Station Sector-5, Panchkula already stands registered against the above accused, on a complaint by similar victim. Upon her demand for returning of money, compromise was allegedly arrived at between the parties and in the said settlement accused had given two post dated cheques of Rs.15 lakhs each in favour of the complainant which had dishonoured due to 'insufficient funds'. It was further alleged that accused No.1 has already sold property in favour of Rajiv Singla. On these broad allegations, the FIR was lodged.

The application under Section 311 Cr.P.C is founded on the ground that the Investigating Agency did not collect the material evidence as well as witnesses necessary for establishing the charges. The application is aimed to condemn the investigation and prayer has been made for allowing the application under Section 311 Cr.P.C. The complainant wants to examine official witnesses from different departments i.e. from Registrar of Companies, Record Clerk from the Judicial Record Room, Panchkula as well as for summoning the record of HUDA Office.

The trial Court proceeded to dismiss the application on the ground that it has not been filed through the Public Prosecutor for the State and also the Court did not find any convincing reason for allowing the

application. Apart from this, it was noticed that the prosecution has already discharged the onus and the case is fixed for defence evidence. Even four opportunities have been given to the defence for adducing its evidence.

At this stage, it is necessary to have a glance at the provisions of Section 311 Cr.P.C which are extracted below:-

*“311.Power to summon material witness, or examine person present- Any Court may, at any stage of any inquiry, **trial** or other **proceeding** under this **Code**, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.”*

A plain reading of this provision makes it absolutely clear that this extra ordinary power has been vested with the trial Court to summon any person as a witness or recall and re-examine any person in case such evidence appears to be essential to the just decision of the case. The power contained under Section 311 Cr.P.C can be exercised by the Court “at any stage”, of any inquiry or trial or other proceedings.

The necessary requirement to press into service this provision is the just decision of the case and if the Court is of the opinion that in case the witness/evidence sought to be adduced under Section 311 Cr.P.C would facilitate it to arrive at truthful conclusion, the power can be exercised. Before that it become necessary for the Court to record a satisfaction that

evidence sought to be adduced under Section 311 Cr.P.C is essential but at the same time, it also needs to be ensured that no prejudice would be caused to the accused.

Learned counsel for the petitioner contends that the stage for adducing the additional evidence under Section 311 Cr.P.C is immaterial and has placed reliance upon two judgments passed by Hon'ble the Supreme Court in Criminal Appeal No.834 of 2006, titled as “***U.T. Of Dadra & Haveli and another Vs. Fatehsinh Mohansinh Chauhan***”, ***2006 (4) R.C.R.(Criminal)*** and Criminal Appeal Nos.1018-1019 of 2001, titled as “***P.Chhaganlal Daga Vs. M.Sanjay Shaw***”, ***2003 (11) SCC 486***.

The first judgment has been perused and the order allowing 311 Cr.P.C application by trial Court was set aside by the High Court, but the Hon'ble Supreme Court had intervened to restore the order of the Sessions Court on the ground that the application if allowed under Section 311 Cr.P.C would not cause any prejudice to the respondent (accused). The Hon'ble Supreme Court has discussed various pronouncement on the subject and in para 11 had relied upon “***Mohanlal Shamji Soni Vs. Union of India and another, 1991(3) R.C.R. (Criminal)***”, which is as under :-

“.....It is the duty of a Court not only to do justice but also to ensure that justice is being done. It was further held that the second part of the Section does not allow for any discretion but it binds and compels the Court to take any of the aforementioned two steps if the fresh evidence to be obtained is essential to the just decision of the case. It was emphasised that power is circumscribed by the principle that underlines

Section 311 Criminal Procedure Code, namely, evidence to be obtained should appear to the court essential to a just decision of the case by getting at the truth by all lawful means. Further, that the power must be used judicially and not capriciously or arbitrarily. It was further observed that evidence should not be received as a disguise for a retrial or to change the nature of the case against either of the parties and the discretion of the Court must obviously be dictated by exigency of the situation and fair play and good sense appear to be the sage guides and that only the requirement of justice command the examination of any person which would depend on the facts and circumstances of each case.”

A reading of the above judgment clearly indicates that a caution needs to be exercised by the trial Court in exercising this extra ordinary discretion that in case the power is exercised it shall not alter the case set up by prosecution. Reverting to the facts and circumstances of the present case, wherein the complainant has highlighted the defects in the investigation and the evidence collected by the Investigating Officer. This plea is raised at the fag end of the trial and in case the application is allowed it would throw away the prosecution case, who has already discharged its onus.

The other judgment relied upon by the petitioner relates to the complaint case filed under Section 138 of Negotiable Instruments Act, 1881 and the trial is summary in nature. By way of additional evidence, under Section 311 Cr.P.C the complainant had desired to produce the postal receipts pertaining to the service of statutory notice. The objection of the accused regarding filling up lacunae by prosecution was discarded by the

Supreme Court. The facts of the said case and issue involved in the present case are entirely different and the said judgment may not be strictly applicable to the facts and circumstances of the case.

A perusal of the judgments relied upon by the petitioner reveals that Section 311 Cr.P.C empowers the Court to exercise its jurisdiction in recalling, re-examining or additionally summoning any witness only when there is possibility to reach close to the truth. At the same time, it is also settled law that such power is to be exercised carefully and not in a mechanical and cryptic manner.

Considering the grounds raised by the petitioner in her application, as she has chosen to condemn the investigation and that too at a belated stage, when entire prosecution evidence is over, the acceptance of application may not only materially affect the prosecution case, but at the same time would cause prejudice to the accused who are in the process of adducing their defence evidence.

In view of the above, no ground is made out for interference with the impugned order dated 26.02.2019 passed by the trial Court.

Petition is dismissed.

(MANOJ BAJAJ)
JUDGE

02.04.2019

vanita

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