

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

CRM-M-28428-2016

Date of decision: July 16, 2019

Vijay Kumar

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. M.S. Yadav, Advocate
 for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. Bhagwan, Advocate for
Mr. Mohd. Yousaf, Advocate
for respondents No. 2 and 3.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer made in the petition is for setting aside the order dated 12.7.2016 (Annexure P-7) passed by the trial Court vide which the application filed by the petitioner to summon the complete record of the evidence, including the statement recorded by the Investigation Officer/Inspector Harnek Singh was declined by the trial Court.

Brief facts of the case are that on the complaint given by the petitioner, FIR No. 72 dated 4.4.2010 under Sections 452/427/423/506/34 IPC was registered at Police Station City Malerkotla, District Sangrur and during the investigation of the said case conducted by Inspector Harnek Singh, the police treated it to be a cross-case and even the petitioner-

complainant in the main FIR was also arrayed as an accused in the cross-version.

In the statement of PW1 Harnek Singh, it was stated that as per his investigation (IO), the case was made a cross-case and further in cross-examination, this witness stated that he has seen the judicial file and the documents (the investigation carried out by this Investigating Officer, including the statement) are not on the judicial file. This witness further stated that only the officer who has presented the challan can tell about the documents.

The petitioner made a request to Court that the further cross-examination be deferred as he wanted to put the above said documents to this witness, after summoning the requisite record. The request was allowed on 1.4.2014 at own responsibility of the petitioner-accused to summon the record. The petitioner, thereafter, moved an application under Sections 91 and 207 Cr.P.C. for directing the prosecution to produce on record, (as detailed in the application) the investigation record carried out by Inspector Harnek Singh. The trial Court vide order dated 10.3.2016 recorded a finding of the statement recorded by Harnek Singh is not on record and it was the duty of the prosecution to bring all the relevant material regarding the case before the Court, however, dismissed the application observing that the petitioner can summon the documents either by moving an application before the Court to summon these for the purpose of proving the same in the cross-examination of this prosecution witness or, secondly can summon the documents at the time of defence evidence.

The petitioner, thereafter, moved another application for summoning the complete record collected by Inspector Harnek Singh. The trial Court vide impugned order dated 12.7.2016 dismissed the application observing that in the earlier order dated 10.3.2016, it was observed that the petitioner can summon the record at the time of his evidence.

The counsel for the petitioner has argued that the observation made by the trial Court that the petitioner can summon the record while recording his defence evidence is patently wrong and the application is moved by the petitioner to put all these documents for the purpose of admission and exhibition during the cross-examination of Inspector Harnek Singh, who has conducted the investigation and prepared these documents. Counsel for the petitioner further submits that since the documents were prepared by Inspector Harnek Singh, as per the provisions of the Evidence Act, only this witness can prove those documents and, therefore, it was necessary to summon the record to enable the petitioner to effectively cross-examine Inspector Harnek Singh and put his defence version to this prosecution witnesses. Counsel for the petitioner further submits that the order dated 10.3.2016 has been wrongly interpreted by the trial Court, as it is clearly observed in this order that the petitioner can either summon the record (for the purpose of putting the same to Inspector Harnek Singh during the cross-examination) or he can lead it during the defence evidence and, therefore, the observations in the impugned order that the petitioner can summon those documents only at the time of defence is erroneous.

Learned State counsel, assisted by the counsel for the respondent-complaint has opposed the prayer on the ground that since the petitioner is relying upon the documents which are not the part of the record, i.e. the report under Section 173(2) Cr.P.C., it is for the petitioner-accused to prove the same at the time of recording of defence evidence.

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

Admittedly, at the first instance when the cross-examination of Inspector Harnek Singh was recorded by the trial Court on 1.4.2014, the request made by the petitioner to defer the further cross-examination as he wanted to put the aforementioned documents after summoning the requisite record was allowed by the trial Court and the cross-examination was deferred. The petitioner, thereafter, moved an application under Section 91 and 207 Cr.P.C. for issuing a direction to prosecution to produce the document, which was however, dismissed on the observation that the petitioner can summon these documents or can prove it by leading the defence evidence and, therefore, no direction can be issued to the prosecution to produce the document.

The petitioner, immediately, moved instant application for summoning the said record which was declined, vide impugned order without appreciating that the right to lead the defence evidence, include a right to confront the prosecution witness with such defence evidence which an accused can produce during the course of the trial while cross-examining the prosecution witness and can put up the documents to prove his

innocence. In this case, admittedly, in the statement of PW1 Inspector Harnek Singh it has come that he has recorded the statements which are not the part of the judicial record and, therefore, once the trial Court has granted permission to the petitioner to summon the record and deferred the further cross-examination, I find that there was no justification in dismissing the application.

Accordingly, this revision is allowed, order dated 12.7.2016 is set aside. The trial Court is directed to summon the complete record of the investigation and allow the petitioner to further cross-examine PW1 Inspector Harnek Singh by way of confronting him with the relevant documents.

The parties are directed to put in appearance before the trial Court on 5.8.2019.

The petition stands disposed, accordingly.

July 16, 2019
satish

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No