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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-3173-2016 [O&M]

Date of Decision : May 28, 2019

Harbhajan Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Sunil Chadha, Senior Advocate,
with Mr. M.K. Arya, Advocate,
for the petitioner.

Mr. Rajat Bansal, AAG, Punjab,
for respondent-State.

Mr. G.B.S. Dhillon, Advocate,
for respondent No.5.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 22.1.2016 (Annexure P/3) passed by learned Additional Sessions Judge, Ludhiana whereby application (Annexure P/1) moved by the petitioner/complainant under Section 311 Cr.P.C. for recalling PW-3 and PW-6 for specific purpose was dismissed.

2. Facts relevant for the purpose of decision of the present petition; that initially FIR No. 66 dated 15.4.2009 was registered under Sections 364/325/342/107/506/120-B IPC on the statement of one Kala Singh. Petitioner is the maternal uncle of the said complainant, Kala Singh. After investigation, police submitted the challan and during trial,

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prosecution witnesses were examined. Thereafter application was filed for recall of PW-3, Harbhajan Singh and PW-6, HC Ravinderpal Singh. The original FIR was by Kala Singh on the ground that injuries were caused to Harbhajan Singh by the other accused persons at the behest of Gurcharan Singh alias Harcharan Singh, who was residing in U.S.A. at the time of commission of offence and was constantly in touch with the main accused on telephone. As per the applicant, Gurcharan Singh alias Harcharan Singh was regularly making telephone calls from his landline No. of USA – 109(367-8675) to the mobile Nos 98145-91033 and 84170-94733 of accused Lakhvir Singh. During the period of abduction of PW-3, accused Lakhvir Singh used to switch on the speakers of his mobile and Gurcharan Singh alias Harcharan Singh used to threaten PW-3, Harbhajan Singh on phone that he will get him eliminated. PW-3, Harbhajan Singh downloaded from the internet website i.e. 411-COM an abstract of the online directory showing that the said landline number belonged to accused Gurcharan Singh alias Harcharan Singh. However, while deposing as PW-3, Harbhajan Singh could not exhibit the same though he himself had taken print-outs and handed over the same to the police and as such, the same is admissible under Section 65(B) of Indian Evidence Act. Plea was also taken that a civil suit titled **Harcharan Singh Vs. Harbhajan Singh** was filed by Gurcharan Singh alias Harcharan Singh which was dismissed on 7.3.2013 where address of Harcharan Singh was given and PW-3 wanted to produce and exhibit the certified copy of the same.

3. PW-6, Ravinderpal Singh also deposed in this case. He obtained call details of two mobile numbers of accused Lakhvir Singh, but because of inadvertence, the email and call details were got marked as

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Mark-A and Mark-1 to Mark 15, whereas they should have been got exhibited. All these above detailed material establish that accused Gurcharan Singh alias Harcharan Singh was consistently in touch and they are required to be re-called.

4. This plea was contested by the respondents taking the preliminary objection that the application itself was not maintainable and the same has been filed just to harass the accused. In fact, Harbhajan Singh had filed an application dated 15.12.2011 for placing on record directory of phone numbers. Reply to the application was filed and the Court, after hearing the arguments, dismissed the same on 13.08.2015. Thereafter, Harbhajan Singh approached this Court and the petition was dismissed by this Court. Earlier applications under Section 311 Cr. P.C. Was earlier filed by the complainant on 9.12.2010 and 23.12.2010 which were duly responded. However, application dated 9.12.2010 was withdrawn on 30.3.2011 and thereafter, the present application was filed to re-call PW, Harbhajan Singh and PW-6, HC Ravinderpal Singh.

5. At the time of arguments, learned senior counsel for the petitioner contended that further cross-examination of PW-3 and PW-6 is essential because the main accused is Gurcharan Singh alias Harcharan Singh who was giving instruction on his landline phone from USA and for that purpose, the petitioner has downloaded telephone directory from the website and the same is required to be put to the witness. Certificate as required under Section 65(B) of the Evidence Act is available, but learned trial Judge has not considered this aspect while deciding application under Section 311 Cr.P.C. and the same is liable to be set-aside.

6. Learned counsel for the respondent contended that the

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present application under Section 311 Cr.P.C. was filed, though the similar application was earlier dismissed on merits. PW-3, Harbhajan Singh was cross-examined at length on three different dates and there is absolutely no ground for recalling of the said witness. Similarly, PW-6, HC Ravinderpal Singh was cross-examined and there is no purpose for recalling of the said witness. So, the present petition deserves to be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of record of this case file, this Court is of the considered view that applicant, Harbhajan Singh had approached this Court earlier and application having been filed under Section 311 Cr.P.C. was partly allowed on 9.4.2015. Subsequently, an application under Section 311 Cr.P.C. was filed which was withdrawn by him when the accused filed reply that a false and fabricated record has been produced. More so, proceedings under Section 340 Cr.P.C. are pending before learned trial Judge on that basis. Earlier, application was dismissed on 13.4.2015. Petition was also filed bearing CRM-M-28708-2015 whereby this Court upheld the order passed by learned trial Judge that telephone directory is not *per se* admissible.

8. Learned trial Judge has rightly considered the statement of Harbhajan Singh and PW-6, HC Ravinderpal Singh while deciding the present application under Section 311 Cr.P.C. and observed that PW-3 had admitted that he had handed over the documents i.e. call details to produce the same in the Court. PW-6, HC Ravinderpal Singh admitted that photocopies of the call details Mark – A and Mark-1 to Mark-15 were objected to by the defence being not signed by official authorized person.

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Witnesses were cross-examined at length and due opportunity was given. Law does not require re-calling of witnesses again and again without there being any justified ground which will ultimately result in delay of decision of pending trial.

9. As regards to provisions of Section 311 Cr.P.C., no doubt, the Court has ample power to summon/re-call material witnesses for their re-examination at any stage, but needless to mention that this power is to be exercised judiciously and not to unreasonably delay the trial of the case. However, in the given circumstances, learned trial Judge has rightly exercised the discretion lawfully vested in him judiciously after considering all the material facts of this case and purpose for which re-examination of PW-3, Harbhajan Singh and PW-6, HC Ravinderpal Singh has been sought and rejected the same vide order dated 22.1.2016 (Annexure P/3). There are no grounds to set-aside the same.

10. Resultantly, the present petition fails and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 28, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes