

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

CRM-M No.3236 of 2016 (O&M)
DATE OF DECISION : 19th NOVEMBER, 2019

Mehmood Hassan

.... Petitioner

Versus

Illias & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Deepender Singh, Advocate for the petitioner.

Mr. Shiva Khurmi, Advocate for the respondents.

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RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed by the petitioner under Section 482 Cr.P.C. for quashing of order dated 04.01.2016 (Annexure P-2) passed by Judicial Magistrate 1st Class, Gurgaon to the extent of it rejected the application of the petitioner/complainant filed under Section 311 Cr.P.C. for permitting him/prosecution to adduce the additional evidence in Criminal Complaint No.225 dated 19.03.2009/ Case No.246/19.08.2015 under Section 500 IPC, titled as Mehmood Hassan Vs. Illias & others pending before it.

2. The brief facts giving rise to the present petition are that the respondents were the prosecution witnesses in some criminal case for an offence under Section 307 IPC. They had made statements before the court as witnesses in those proceedings. The petitioner perceived those statements to be defamatory against him. As a result, the petitioner initiated the criminal complaint under Section 500 of the IPC, involving all the respondents as the accused. During the proceedings of the trial,

the evidence of the petitioner/complainant was completed. Thereafter, the respondents produced their defence witnesses. No document was tendered by the respondents in the defence evidence. But, subsequently the counsel for the respondents/accused tendered certain documents in defence evidence and closed the defence evidence. However, at the time of tendering of these documents and exhibiting the same, no fresh witness was produced or examined by the respondents/accused. The petitioner claims that during the inspection of the file, he found that certain documents have been placed on record of the file, some of which are shown to have been exhibited and some of them are only marked documents. Since these documents were not exhibited during the testimony of the witnesses of the defence, therefore, the petitioner had not got any opportunity to put questions regarding these documents to the witnesses of the defence. Hence, the petitioner moved two applications before the trial court. First application was regarding placing on record certain pleadings/orders of the court emerging in civil proceedings. The second application was moved by the petitioner for the purpose of rebutting the documents, which the defense had tendered at the time of closure of their evidence. The trial court allowed the first application of the petitioner. However, the second application was declined by the trial court. Against this order the present petition has been filed by the petitioner.

3. It is contended by the counsel for the petitioner that through the above said method the defence have placed on record certain documents showing that they had earlier filed some proceedings before the High Court regarding investigation of still another FIR and in that

proceeding this court had directed further investigation by a senior officer. However, the petitioner had not got any opportunity to rebut these documents or to cross-examine the witnesses of the defence regarding these documents. It is further submitted that the information, placed on record by the defence, through above said documents, which the petitioner wanted to rebut, was incomplete. In fact, after this court had passed the order on petition of the respondents qua further investigation, the said investigation was conducted and even the cancellation report was filed by the police. The defense had withheld this information from the court. The petitioner wanted to bring those documents on record; by way of his second application. It is further contended that since the petitioner is required to prove the case beyond reasonable doubt, therefore, the petitioner has to be granted a fair opportunity to rebut the documents tendered by the defence. Still further, it is contended that the court below has dismissed the application filed by the petitioner by adopting the wrong criterion, which was not even meant for consideration of an application under Section 311 Cr.P.C.

4. On the other hand, learned counsel for the respondents has submitted that the application had been filed by the petitioner at a belated stage, much after the respondents had already closed their defence evidence. By filing this application, the petitioner intends to fill up lacunae, left in the case of the prosecution. Still further, it is submitted that right from the beginning, these documents were in the knowledge of the petitioner, therefore, the petitioner had not shown due diligence in leading these documents in evidence at the relevant stage. Hence, the

trial court has not committed any illegality or irregularity in declining the application filed by the petitioner.

5. Having heard the learned counsel for the parties and having perused the case file, this court finds substance in the argument of learned counsel for the petitioner. It is not even denied that the respondents claimed to have filed a petition before this court for seeking some direction for further investigation in a case. The respondents have placed on record the order of the High Court and the related documents qua those proceedings; by way of tendering the same through their Advocate. No witness was examined at the time when those documents were tendered in evidence by the defence. Hence, the petitioner has not been granted any opportunity to rebut the documents as such; or to question the defence qua the veracity of the said documents.

6. Still further, the documents; which the petitioner is now trying to place on record, are only the documents which relates to culmination of the same proceedings, regarding which the respondents had tendered the documents. Hence, the documents sought to be produced by the petitioner are; otherwise also; necessary for just decision of the case by the trial court, since the same would show as to what had finally happened in those proceedings; regarding which the documents were placed on record by the defense. Hence, the documents sought to be produced by the petitioner are even having a direct relevance to the aspect of the dispute between the parties.

7. However, this court does not find any force in the argument of the counsel for the respondents that the petitioner is trying to fill up the lacunae in his case. The complainant, being a prosecutor, is supposed to

prove its case beyond reasonable doubt. Hence, the burden is heavily cast upon the complainant in a criminal case; to prove the facts; as compared to the burden cast upon a person in civil litigation. Therefore, the complainant/petitioner deserves to be granted every possible opportunity, in accordance with law, to prove the case of the prosecution before the court. The concept of filling of the lacuna is not available against the prosecution at the stage of the evidence. The concept of the lacunae in the case of the prosecution is a post evidence concept. It is available at the stage of arguments and relates to the arguments of the defense, and which is used to point out gaps in the evidence of the prosecution so as to create a doubt in the story of the prosecution. Hence, the application of the petitioner could not have been dismissed by the court below on the plea of the defense that the petitioner was trying to fill up the lacunae, as such.

8. This court also does not find any force in the argument of the counsel for the respondents that the petitioner was having the knowledge of the documents, which are now sought to be produced by way of additional evidence, even at the stage when he was leading the evidence, and therefore, he has to be declined the permission to lead the said documents in additional evidence due to lack of due diligence on his part. A bare reading of Section 311 Cr.P.C. shows that the aspect of lack of diligence on the part of the prosecution or the party is not even contemplated as the relevant factor for exercise of power of the Section. The requisite criteria for the courts to exercise its discretion under Section 311 Cr.P.C. is, whether the evidence/documents, sought to be brought on record, are essential for just decision of the case or not. Needless to say that if the documents tendered by the defense, after

examination of their witnesses, are not permitted to be rebutted by the complainant, in similar manner, then the same can lead to miscarriage of justice; as well.

9. In view of the above, the present petition is allowed. The necessary permission to lead the additional evidence, as prayed in the application moved by the petitioner, is granted.

10. However, since the complaint is of the year 2009 and the same has already been delayed inordinately, therefore, it would be in the fitness of the things that the proceedings of the trial court are now bound down to be completed in a time bound frame. Hence, it is ordered that the petitioner shall be granted only one effective opportunity to tender in evidence the documents as are permitted by this order. Thereafter, since the evidence of the parties is over, therefore, the trial court would decide the trial itself; preferably; within a period of three months from the date of receipt of the certified copy of this order.

19th NOVEMBER, 2019
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:

Yes

No

Whether Reportable:

Yes

No