

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-42207 of 2017

Date of Decision: January 14, 2019

Gurcharan Singh

.....Petitioner

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.V.S. Chugh, Advocate
for the petitioner

Mr. Luvinder Sofat, AAG Punjab

Sudhir Mittal, J. (Oral)

The petitioner is undergoing trial in a murder case. He is accused of having murdered his son Bittu Singh. The FIR was got registered on the complaint filed by his daughter namely Kuljeet Kaur. Said Kuljeet Kaur and petitioner's wife namely Amarjeet Kaur were cited as prosecution witnesses and their examination-in-chief was recorded on 13.07.2015. Cross-examination was completed on 14.09.2015 and they stood by the story mentioned in the FIR.

Two years later, wife of the petitioner namely Amarjeet Kaur filed a petition allegedly under the Maintenance and Welfare of Senior Citizens Act, 2007 (hereinafter referred to as 'the Act') against Sukhpal Kaur widow of Bittu Singh. This application is dated 10.03.2017 and has been placed on record as Annexure P-2. In the said petition Amarjeet Kaur as well as Kuljeet Kaur gave affidavits that they had been pressurized by the police to depose falsely in the criminal case pending against the petitioner. Infact they had not witnessed the murder.

Consequently, an application under Section 311 Cr.P.C. was preferred by the petitioner seeking to recall aforementioned Amarjeet Kaur and Kuljeet Kaur for further cross-examination. Vide the impugned order dated 06.10.2017 (Annexure P-7), the said application has been rejected.

Learned counsel for the petitioner contends that from the perusal of affidavits Annexures P-3 and P-4, it is apparent that Amarjeet Kaur and Kuljeet Kaur have retracted from their earlier version and, thus, it is essential to further cross-examine them. An application for additional evidence or for recalling a witness can be moved at any stage and, thus, the trial Court was in error in dismissing the application.

On the contrary, learned State counsel submits that perusal of the affidavits Annexures P-3 and P-4 shows that all that is stated therein is that the earlier version given before the police in the criminal case was false as it was given under police pressure. Nothing regarding ill-treatment by the daughter-in-law namely Sukhpal Kaur is mentioned therein. A perusal of the application Annexure P-2 under the Act also shows that the major part of the application is devoted to mentioning that Amarjeet Kaur and Kuljeet Kaur had been pressurized by the police to depose falsely. Only in the end, an assertion had been made that Sukhpal Kaur had thrown out Amarjeet Kaur from her house after calling her names without giving any details. Thus, the proceedings initiated under the Act is an attempt to mislead the prosecution and is collusive in nature. The order of the trial Court is not liable to be interfered.

With the assistance of learned counsel for the parties, I have perused the record.

Application under the Act Annexure P-2 recites that Sukhpal Kaur was allegedly in an illicit relationship with the petitioner due to which the petitioner

murdered his son. The applicant namely Amarjeet Kaur was not present in the house when the incident occurred but on seeing her son's dead body she became mentally disturbed and gave a statement, indicting the petitioner. Thereafter, she was pressurized by the police to depose against him. In the last paragraph, it is mentioned that Sukhpal Kaur (daughter-in-law) had thrown the applicant namely Amarjeet Kaur out of her house after abusing her but no details have been mentioned. The affidavits Annexures P-3 and P-4 only state that statement of the deponents recorded in criminal case were made under police pressure and nothing regarding ill-treatment by the daughter-in-law namely Sukhpal Kaur or any other instances of ill-treatment are mentioned. Thus, the argument of learned State counsel appears to be well founded. The petitioner appears to have got around his wife and daughter and has adopted the path of initiating proceedings under the Act to get himself acquitted. This can not be permitted in law.

Learned counsel for the petitioner has placed reliance upon judgments passed in *Baljit and others vs. State of Haryana and another, 2009(2) RCR(Criminal) 178*, *Khushwinder Singh and another vs. State of Punjab, 2007(1) RCR(Criminal) 531*, *Sharawan Singh vs. State of Rajasthan, 2005(2) Criminal Court Cases, 755* and *Fatehsinh Mohansinh Chauhan and others vs. Union Territory of Dadra and Nagar Haveli, Silvassa and another, 2003(4) RCR(Criminal) 168*.

The proposition of law laid down in the said judgments can not be disputed. However, on facts, these judgments are distinguishable.

The petition has no merit and is, accordingly, dismissed.

January 14, 2019
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[SUDHIR MITTAL]
JUDGE

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