

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

CRM-M No.43879 of 2017

Reserved on: 29.01.2019

Date of decision: 31.01.2019

Ahwani Kumar

....Petitioner

Versus

State of U.T., Chandigarh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Satnam Chauhan, Advocate
for the petitioner.

Mr. Rajiv Sharma, Addl. P.P., U.T., Chandigarh.

Mr. Haneet Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for setting-aside the order dated 13.09.2017 passed by the trial Court vide which the application filed by respondent No.2 under Section 311 of the Code of Criminal Procedure (in short 'Cr.P.C.') for summoning additional witness in FIR No.279 dated 17.10.2013 registered under Sections 380, 448 and 454 of the Indian Penal Code (in short 'IPC') at Police Station Industrial Area Phase 1, Chandigarh, was allowed.

Brief facts of the case are that respondent No.2 – Sukhdeep Singh was a tenant under the petitioner in SCF No.53, Sector 30-C, Chandigarh on a portion of the premises. The complainant got the aforesaid FIR registered on the allegation that the police has taken forcible possession from the complainant and has taken away the articles lying in the premises. When the statement of the accused/petitioner under Section 313 Cr.P.C. was recorded, the complainant moved an application under Section 311 Cr.P.C., for summoning 03 persons Yadwinder Salwan, H.C. Sudhir Kumar and Ashok Kumar as additional witnesses. In the application dated 29.08.2017, it was stated that the complainant was unlawfully dispossessed from the tenanted premises on 8/9.06.2011 and his office articles were stolen and despite running from pillar to post from the various police authorities, the investigation was not properly done and the important witnesses including the aforesaid 03 persons were not cited as a witness and the Court has closed the prosecution evidence vide order dated 17.08.2017. It is stated that Yadwinder Salwan was a witness to the incident whereas the other witnesses are regarding the enquiry conducted by the police to show the manner in which the police officials have failed to perform their duties.

The trial Court vide impugned order dated 13.09.2017 allowed the application only with regard to the aforesaid 03 witnesses, however, partly dismissed the application vide which the complainant has sought to summon the concerned official clerks from the office of Police Complaints Authorities, DIG Chandigarh, DSP (Crime) and DSP (East), Chandigarh by observing that it is not mentioned in the

application for what purpose the said officials need to be examined and it is not mentioned how such evidence is necessary for the just and proper decision of the case. The trial Court further observed that out of 03 witnesses Yadwinder Salwan was named by the complainant while appearing as PW2 as a witness of the occurrence and, therefore, he is a material witness and HC Sudhir and Ashok Kumar despite being cited as a prosecution witness in the report under Section 173 Cr.P.C. were not examined by the prosecution, therefore, they also need to be examined.

The petitioner/accused has filed the present petition challenging the aforesaid order.

Counsel for the petitioner has argued that the complainant has also filed a suit for restoration of the possession under Section 6 of the Specific Relief Act, however, he could not get any relief from the Civil Court and the same was dismissed vide judgment dated 10.01.2017. It is further argued that the FIR was registered after much delay and relied upon the interim orders passed by the trial Court to submit that sufficient time was given to the prosecution for recording the evidence. However, it is not disputed by counsel for the petitioner that HC Sudhir and Ashok Kumar (presently ASI) were neither examined nor given up by the prosecution. Counsel for the petitioner has also not disputed that in the statement of the complainant, who appeared as PW2, it is specifically stated that in the presence of Yadwinder Salwan, the police came but no action was taken.

Counsel for the petitioner has further submitted that the present application is filed at a highly belated stage just to fill up the

lacuna in the prosecution evidence and the trial Court has wrongly exercised its jurisdiction.

It is worth noticing here that initially the petitioner has filed a revision before the Additional Sessions Judge challenging the same impugned order, however, the same was later on dismissed as withdrawn on 17.10.2017 without obtaining any permission of the Court.

In reply, counsel for the complainant has submitted that it is a case of highhandedness of the police and after 28 months of the incident, the police registered an FIR that too when the petitioner has made various complaints to the police authorities and on 25.11.2011, the Police Complaints Authority, U.T., Chandigarh observed as under:-

“...All the three officers, namely Sub-Inspectors Tilak Raj and Ranbir Singh and Inspector Malkit Singh (SHO P.S. Industrial Area, Chandigarh) have grossly abused their powers by helping Ashwani Khanna in his illegal act of dispossessing Sukhdeep Singh from the tenanted premises. The presence of tenant's goods in the premises is a strong and un rebuttable circumstance and a ground reality to prove his possession. The landlord is at liberty to seek tenant's eviction as per law.

Sub-Inspector Tilak Raj and Ranbir Singh and Inspector Malkit Singh are found to have abused their powers and to have acted in a mala fide manner. They are liable for disciplinary action against them through departmental enquiries.

The Inspector General of Police is requested to proceed against the three police officers accordingly. He is also requested to order a fresh inquiry into the complaint lodged by Sukhdeep Singh against the landlord Ashwani

Khanna through an upright police officer.

Action taken report may be awaited for 3 weeks.

25-11-2011

<i>(Justice N.K. Agrawal)</i>	<i>(K J. Singh)</i>	<i>(Joyshri Lobo)</i>
<i>(Retd.)</i>	<i>IPS/DGP (Retd.)</i>	<i>Member</i>
<i>Chairman</i>	<i>Member</i>	

Counsel for the respondent has further submitted that later on, regular departmental enquiry was conducted against the erring police officials and Inspector Malkit Singh and SI Tilak Raj were found guilty in the departmental enquiry by the DSP (Crime), U.T., Chandigarh and were later on, punished in accordance with the service rules. Thereafter, after much persuasion of the complainant, the present FIR was registered and despite the fact that immediately after the incident the statement of Yadwinder Salwan was recorded on 09.06.2011 (a photocopy of which is shown to the Court) but he was never cited as a prosecution witness while submitting the report under Section 173 Cr.P.C. It is also submitted that 02 of the witnesses who were associated in the investigation i.e. HC Ashok Kumar and Sudhir Kumar despite being cited as a witness, the prosecution did not examine them to extend a favour to the petitioner/accused.

Counsel for the complainant/respondent No.2 has relied upon **Criminal Appeal No.48 of 2019 (arising out of SLP (Crl.) No.1120 of 2017)** titled as ***“Brig. Sukhjeet Singh (Retd.) MVC vs The State of Uttar Pradesh and others”*** decided on **24.01.2019**, wherein with regard to the powers under Section 391 Cr.P.C., it was held that all powers are conferred on the Courts to secure the ends of justice and the ultimate object of the judicial administration is to secure the ends of

justice as the Court exists for rendering justice to the people.

Counsel for the respondents has further submitted that the powers under Section 311 Cr.P.C. are even wider than the powers under Section 391 Cr.P.C. and, therefore, the trial Court has rightly exercised its jurisdiction in allowing the same. It is also submitted that the petitioner had filed a revision before the Court of Sessions, which was later on, dismissed as withdrawn unconditionally as the Court was not agreeing to the arguments of the petitioner and only thereafter, the present petition has been filed.

After hearing the counsel for the parties, I find no ground to interfere in the impugned order passed by the trial Court in allowing the application filed under Section 311 Cr.P.C. The trial Court has rightly observed that the witness – Yadwinder Salwan is a witness of the incident/occurrence and it has come in the statement of PW2 – Sukhdeep Singh i.e. the complainant that he was present at the spot. Even a photocopy of the statement of this witness, which was recorded by the police on 09.06.2018 show that he is a witness of the occurrence, however, the said witness was not cited as a witness in the report under Section 173 Cr.P.C. Needless to say that 03 of the police officials have faced departmental enquiry and were held guilty and they were punished as per the Service Rules for not performing their official duties properly. The remaining 02 witnesses were cited as a prosecution witnesses in the report under Section 173 Cr.P.C. but neither they were given up nor the prosecution or the Public Prosecutor has made any effort to examine them and, therefore, the trial Court has rightly allowed the application filed by the respondent/complainant.

For the foregoing reasons, finding no ground, the petition fails and is accordingly dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

31.01.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No