

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-45892 of 2018 (O&M)
DECIDED ON: 18.01.2019

SUKHWINDER KAUR

..PETITIONER

VERSUS

STATE OF PUNJAB AND ANR.

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Kewal Krishan, Advocate for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

Mr. Sanjay Gupta, Advocate
for respondent No.2-complainant.

RAMENDRA JAIN, J. (ORAL)

CRM-38253-2018

Application is allowed as prayed for. Documents (Annexures
P-7 to P-11) are taken on record. Be tagged at appropriate place.

Main case

Service complete.

Mr. Sanjay Gupta, Advocate has appeared and filed power of
attorney on behalf of respondent No.2-complainant. The same is taken
on record. Be tagged at appropriate place.

Through this petition, petitioner-accused has laid challenge to
order dated 01.08.2018 (P-1), whereby trial court dismissed her
application under Section 311 Cr.P.C. for summoning the entire
prosecution witnesses for her cross-examination and also order dated

04.09.2015 (P-2).

At the outset, learned counsel for the petitioner withdraws his prayer qua setting aside of order dated 04.09.2015 (P-2), whereby application under Section 216 Cr.P.C. for framing additional charges against the accused persons, was allowed.

Briefly, petitioner was booked in case FIR No.9 dated 27.01.2010, under Sections 420, 465, 467, 468, 471 and 120-B IPC registered at Police Station City SBS Nagar, on the allegations that she along with other accused prepared a forged and fabricated will dated 18.12.1959 of one Puran Singh and Harnam Singh in order to grab their property, which ought to have devolved upon respondent No.2-complainant and other legal heirs of Puran Singh. After completion of investigation, final report under Section 173 (2) Cr.P.C. was filed against the petitioner and accordingly, she was charge-sheeted under Sections 467, 468, 471 read with 120-B IPC. After conclusion of prosecution evidence, recording the statements of petitioner and her co-accused under Section 313 Cr.P.C. and also their supplementary statements, petitioner moved application under Section 311 Cr.P.C. before the trial court to summon afresh all the prosecution witnesses for cross-examination. The same after hearing both the sides was dismissed vide impugned order (Annexure P-1).

Learned counsel for the petitioner contends that during trial petitioner never engaged any counsel. She was not ever afforded any opportunity to cross-examine the prosecution witnesses. The trial court

has failed to appreciate that no prejudice is going to be caused, in case, all the prosecution witnesses are re-called for recording their statements afresh and cross-examination of the petitioner. In case, impugned order is not set aside, legal right of the petitioner would be prejudiced.

On the other hand, learned counsel for the respondents refuting the above submissions of learned counsel for the petitioner and drawing attention of this Court to para No.10 of the application of the petitioner under Section 311 Cr.P.C. urged that contents of the same are factually incorrect. All the prosecution witnesses were cross-examined by counsel for the petitioner to whom she had engaged. The instant petition of the petitioner is a blatant lie, in view of the fact that statement of the petitioner under Section 313 Cr.P.C. and supplementary statement were recorded through her counsel namely Mr. V.S. Pahwa, Advocate.

Having given anxious thought to the rival submissions, this Court finds the instant petition completely devoid of any merit for the reasons to follow:-

1. Charges in the instant case against the petitioner were framed on 27.11.2015. The impugned application under Section 311 Cr.P.C. was moved by her after around more than 2 and half years. Therefore, it is wholly unbelievable that petitioner, in such a long span during trial remained silent and kept on noting the court proceedings, without engaging any counsel.

2. Perusal of supplementary statement (P-9) of the

petitioner under Section 313 Cr.P.C. shows that she was represented by Sh.VS Pahwa and it was recorded through him. It seems that due to some typographical mistake on some occasions, the presence of learned counsel for the petitioner could not be marked in specific on her behalf by the trial court. Rather, his presence was marked on behalf of all the accused, which impliedly shows that Mr. P.S. Pahwa had cross-examined PW-11 on behalf of the petitioner too.

On account of typographical error in marking the presence of learned counsel for the petitioner by the trial court, the petitioner cannot be permitted to seek denovo the entire trial, which is now at its final stage.

Moreso, from the impugned order, it is apparent that petitioner has already availed sufficient opportunities to examine her defence witnesses.

In view of the discussion made above, the instant petition is dismissed and impugned order is upheld.

18.01.2019*sonika***(RAMENDRA JAIN)****JUDGE****Whether speaking/reasoned****Yes/No****Whether reportable****Yes/No**