

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

CRM-M-4769-2018

Reserved on : 21.11.2019

Pronounced on : 28.11.2019

Gurcharan Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. A. P. S. Deol, Sr. Advocate with
Mr. H. S. Deol, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. R. V. S. Chugh, Advocate
for respondent Nos. 2, 4 to 6.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing the order dated 19.01.2018 (Annexure P-5), vide which the trial Court has dismissed the application moved by the petitioner/complainant under Section 311 Cr.P.C. for summoning the additional documents/witnesses which are just and necessary in the proper adjudication of the case and were inadvertently left out by the Investigating Officer while submitting report under Section 173 (2) Cr.P.C. in FIR No. 192 dated 01.11.2011, under Sections 420, 419, 467, 468, 471, 406, 120-B of the IPC at Police Station City Mansa.

Brief facts of the case are that petitioner Gurcharan Singh is the complainant in the aforesaid FIR. He is an old man aged about 75 years and is an illiterate man, who can only write his name.

As per the allegations in the FIR, registered against the accused

persons/private respondents, who are running the business of commission agent, are that they have prepared forged cheque in favour of Ashwani Kumar by committing a breach of trust as the cheque book and cheques of the petitioner/complainant were misused by them and fake entries were made in the book of accounts. It is further stated in the FIR that the complainant used to sell his agriculture produce to the firm of Krishan Kumar namely M/s Kashi Ram Atma Ram, Commission Agent, Mansa Mandi and the complainant used to deposit his sale proceeds of his crop in the shop of Krishan Kumar from 1998 to 2008 and out of the said amount, the complainant used to get money for the purchase fertilizers, clothes and other commodities. It is further stated in FIR that 8/9 Lakh is due towards the commission agent shop and when in 2008, the complainant/petitioner asked Krishan Kumar to settle the accounts, the same was lingered on by Krishan Kumar on one pretext or the other and when the petitioner asked him to return his documents, licence and cheque book, again the same were not supplied to him. It is further stated that Krishan Kumar and Ashwani Kumar used to maintain the accounts of commission agency and they have kept blank cheques signed by the petitioner, though the petitioner did not operate his account for a long time in the Bank of Punjab which later on merged with HDFC Bank. Later on, the accused persons by showing bogus entries in the account statement, have filled up the cheques and presented the same in the bank which were dishonoured being on account of insufficient funds and the complaints under Section 138 of the N.I. Act were filed. The police after registration of the aforesaid FIR submitted the challan and thereafter, the trial Court framed the charges.

After the statement of PW-2 Ujjagar Singh, Mandi Supervisor,

Mansa Market committee, Mansa was recorded, the petitioner filed an application under Section 311 Cr.P.C. for proving some documents with the allegations that the same were duly supplied to the Investigating Officer, however, they were not made part of the challan. The details of the documents, as given in the said application, are as below:

- “1 Auction register, Market Committee, Mansa regarding sale of crop by Gurcharan Singh son of Sadhu Singh, resident of Mian which was sold by him through commission agency of Kashi Ram Atma Ram during the year 2004 to 2008.
- 2 Record regarding licence No.4848 which is in the name of Mian Commission agent, Mansa on which date it was issued and on which date, it was invalid.
- 3 Account opening and file dated 12.01.2015 of Bank of Punjab which was lateron merged in HDFC.
- 4 Voucher amounting to Rs.6000/- dated 23.05.2009 and voucher amounting to Rs.5000/- dated 17.06.2009.
- 5 Copy of plaint and written statement filed in civil suit titled as Gurcharan Singh vs Firm Kashi Ram Atma Ram etc.”

In the application, it was also stated that the witness from the relevant bank/market committee be also summoned to prove the aforesaid documents.

The said application was contested by the accused persons/private respondents and it was argued that when the investigation was conducted, the police prepared a list of documents and witnesses, which was attached with the report under Section 173 Cr.P.C. and, therefore, the same cannot be allowed.

The trial Court, while dismissing the said application, has passed the following order:

- “5. Perusal of the file reveals that the documents sought to be proved by the prosecution already in the judicial

file. Moreover, case is also pending for prosecution evidence and only two witnesses have been examined in this case till date as charge in this case was framed on 24.08.2015. Complainant is yet to be examined by the prosecution. The prosecution has to prove its case by leading the evidence independently in the present case and it cannot be allowed to invoke the provision of section 311 of the Cr.PC for bringing the facts of the other case in the present case. There is force in the contention of counsel for the accused that the prosecution under the garb of section 311 of the Cr.PC cannot be allowed to fill up the lacuna and cover the weakness of the evidence led by the prosecution witnesses. Accordingly, the present application is dismissed.”

Hence, the petitioner/complainant has filed the present petition challenging the aforesaid order.

Learned senior counsel for the petitioner has argued that the trial Court has found that the documents are already on its record as it was part of the police file but the same were not mentioned in the report filed under Section 173 Cr.P.C.

Learned senior counsel for the petitioner has further argued that the documents which are sought to be proved on record are the account form of the Bank of Punjab which later on merged with HDFC Bank to show that the same was in fact operated by accused Ashwani Kumar on behalf of the petitioner.

Learned senior counsel for the petitioner further argued that even licence issued by the Market Committee, Mansa in the name of M/s Mian Commission Agent, Mansa, showing that the petitioner/complainant is

a proprietor, is also required to be proved as the same was misused by accused Ashwani Kumar, who was managing its affairs.

Learned senior counsel further argued that since the business of M/s Mian Commission Agent, Mansa was closed in a short duration, the cheques, passbooks were in the custody of accused Ashwani Kumar and instead of returning the same, he has misused them on the pretext of settling the accounts by showing outstanding against the petitioner.

Learned senior counsel has further submitted that in this process, the accused persons have misused three cheques, details of which are given in the petition.

Learned senior counsel further argued that even at one stage, Renu Garg/respondent No. 2, wife of Krishan Kumar, had filed a petition seeking quashing of the FIR, which was contested by the petitioner and ultimately it was withdrawn.

Learned senior counsel has, thus, argued that in order to prove the sale proceeds of the petitioner and account book of the accused persons, the aforesaid documents are necessary to be proved on record.

Reply, filed by way of affidavit of DSP, Sub Division Mansa, on behalf of respondent No. 1-State, is on record. In reply, it is stated that the documents, sought to be produced by the petitioner, are relevant and important documents having link with the prosecution case but the same were not made part of report submitted under Section 173 report and in case the application, filed by the petitioner under Section 311 Cr.P.C., is not allowed, the same will adversely affect the case of the prosecution and in case it is allowed, no prejudice will be caused to the accused persons.

Learned counsel for the accused persons/private respondents

has, however, opposed the prayer of the petitioner/complainant on the ground that the said application has been moved at a highly belated stage when the case is fixed for prosecution evidence.

It is also argued that the application was moved just fill up the lacuna in the prosecution evidence and in case the same is allowed, it would amount to a *de novo* trial.

After hearing learned counsel for the parties, I find merit in the present petition.

The documents, mentioned at Sr. No. 1 in the application, are relating to sale proceeds of the petitioner to the shop of accused persons and the documents, mentioned at Sr. Nos. 2 and 3, relate to the licence of M/s Mian Commission Agent and account opening form in the Bank of Punjab which later on merged with HDFC Bank. The allegations of the petitioner are that both of these were operated by accused Krishan Kumar and, therefore, the fact that accused have made manipulations in the account books can be proved only from these documents.

Even the pleadings before the civil Court will help the trial Court to come to a definite conclusion. Though the application has been filed at a belated stage, however, considering the fact that all these documents are already on record as it is observed by the trial Court itself and were given by the petitioner to the Investigating Officer who had submitted the report under Section 173 Cr.P.C. without making those documents part of it.

While dealing with the similar question of law, Hon'ble Supreme Court, in *U.T. of Dadra & Haveli & Anr. vs. Fatehsinh Mohansinh Chauhan*, 2006(4) RCR (Criminal) 113, has held that an

application moved under Section 311 Cr.P.C. can be allowed even if the prosecution and defence evidence is closed and it would not amount to filling up lacuna in prosecution.

Therefore, in view of the facts and circumstances of the present case and also in view of the judgment referred to above, I find it to be a case where the application, moved by the petitioner under Section 311 Cr.P.C., needs to be allowed as proposed additional evidence will enable the trial Court to come to a definite conclusion.

Accordingly, the present petition is allowed and order dated 19.01.2018 (Annexure P-5), passed by the trial Court, is hereby quashed.

However, this will be subject to payment of cost of Rs. 10,000/- to the accused persons/private respondents and in case the same is not accepted by them, the same will be deposited with the District Legal Services Authority, Mansa.

The accused persons/private respondents shall have a right to cross-examine the witness or to further cross-examine the witnesses, who have already been examined, if any of the proposed additional evidence relates to them.

28.11.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No