

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-53137 of 2018

.....

Date of decision:07.02.2019

Deepak Goyal

.....Petitioner

v.

State of Punjab and others

.....Respondents

....

Present: Mr. Sunny Kumar Singla, Advocate for the petitioner.

Mr. Dhruv Dayal, Deputy Advocate General, Punjab for the respondent-State.

Mr. Ishan Gupta, Advocate for respondents No.2 and 3.

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Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. praying for quashing of the impugned order dated 24.8.2018 (Annexure-P.4) passed by learned Sub Divisional Judicial Magistrate, Sunam, being illegal and contrary to the provisions of law in FIR No.29 dated 13.03.2014 registered for the offences under Sections 420, 406, 447, 204, 448 and 120-B IPC at Police Station Sadar, Sunam, Sangrur.

Notice of motion was issued in this case.

Mr. Dhruv Dayal, learned Deputy Advocate General, Punjab has appeared on behalf of the respondent-State and Mr. Ishan Gupta, learned Advocate has appeared for respondents No.2 and 3 and contested this petition.

I have heard learned counsel for the parties as well as learned State counsel and have gone through the record.

From the record, I find that before the trial Court two applications were filed firstly, for directing the accused to produce retirement deed dated 31.3.2011, partnership deed dated 1.4.2011 and retirement deed dated 6.4.2011 as the same are required to be proved from the witnesses. The accused took the plea in the reply that at this stage no document can be called from the accused as report under Section 173 Cr.P.C. has already been submitted by the Police.

The learned trial Court in view of the reply dismissed the application. Another application was filed under Section 65 of the Evidence Act for proving the agreement dated 13.4.2011, retirement deed dated 31.3.2011, partnership deed dated 1.4.2011 and retirement deed dated 6.4.2011 by way of secondary evidence as the original of all the documents are in possession of accused Pawan Kumar, but the accused has refused to produce the same in the Court. The learned trial Court vide order dated 24.8.2018 dismissed the application.

I have gone through the impugned order passed by the learned trial Court.

From the record, I find that existence of these documents is admitted and photo copies of these documents also show the existence of these documents. The secondary evidence can be led if the documents are not available or are stated to be in possession of the other party and the other party is not producing the same. In the present case, the accused has contested the application for producing the documents and stated that these documents are not with them. They have stated that these documents are in possession of father of the applicant-complainant.

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Keeping in view the fact that these documents are necessary for the just decision of the case and there is no dispute regarding the existence of the documents which are otherwise clear from the photo copies of these documents; the accused are not producing the same and as per the prosecution version that these are in possession of the accused, therefore, in these circumstances the requirement of Section 65 of the Evidence Act is made out and this application should have been allowed to do the substantial justice between the parties. It is settled law that the Court should not go into the technicalities of law, but to do substantial justice between the parties.

In the facts and circumstances of the present case, this application should have been allowed by the learned trial Court and has wrongly dismissed the same. Therefore, the impugned order dated 24.8.2018 regarding this application of secondary evidence is allowed and the order of the learned trial Court to that extent is set aside.

Therefore, finding merit in this petition, the same is allowed to the above extent.

February 07, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No