

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

Criminal Misc. No.M-40624 of 2019(O&M)

Date of Decision: October 22, 2019

Avnish Kumar

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

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Present: - Mr.Ajit Lamba, Advocate for the petitioner.

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HARINDER SINGH SIDHU, J.

The petitioner has filed this petition under Section 482 Cr.P.C praying for setting aside order dated 23.5.2019 passed by the learned Sub Divisional Judicial Magistrate, Siwani, District Bhiwani vide which his application under Section 311 Cr.P.C for placing on record the compact disc (CD) of the CCTV recording in case FIR No.0202 dated 30.11.2017 under Section 427, 448 and 506 IPC has been dismissed.

The FIR has been registered on the complaint of the petitioner. He had alleged that his son and daughter-in-law were living in Delhi. They had no concern with him. He had dis-inherited them from all his immovable property. On 29.11.2017 his daughter-in-law had come from Delhi to Siwani. She tried to enter his house forcibly. At about 10.00 a.m. on 30.11.2017 his daughter-in-law entered his shop No.47, Anaj Mandi, Siwani by breaking open the lock of the shop. She threatened that if any one stopped her from entering the shop, he would be killed.

After completion of investigation, the challan was filed and the trial commenced.

The petitioner filed the application for placing on record the CD (compact disk) of the CCTV camera footage claimed to be placed outside the shop of the applicant. He claimed that the incident had been recorded in the CCTV camera. He stated that the CD had been prepared prior to filing of the challan. He had requested the investigating officer to take it into possession and make it part of the final report. However, the Investigating Officer did not make the CD part of the investigation. Hence he moved the application under Section 311 Cr.P.C to produce the CD in question in evidence.

The respondent-accused opposed the application. It was his case that by introducing the CD, the petitioner wanted to fill the lacuna in the case and that the application has been moved just to delay the proceedings. The application was moved long after the challan had been filed on 08.12.2017.

The Learned Trial Court dismissed the application taking into consideration various aspects. The case was registered on 30.11.2017. The challan was presented on 08.12. 2017. Copy of the challan was supplied to the accused on 28.5.2018. Charges were framed against the accused on 28.5.2018. Thereafter prosecution availed two opportunities to lead evidence, however, no evidence was produced. It was at that stage that the petitioner moved the application. Learned trial Court noted that it was open to the complainant to have moved an application before the Investigating Officer to hand over the CD to him. If the Investigating Officer did not take it into consideration, it was open to the complainant to file appropriate application. It was further noticed that in the complaint dated 30.11.2017 there is no mention of that fact that a CCTV camera has been installed at the

shop of the complainant and the entire incident was recorded in the CCTV camera. The CD in question has been produced one and half years after the date of occurrence. The CCTV camera footage had not been sent to the Forensic laboratory for testing its veracity. It was concluded that as the CD has been produced by the complainant on his own without any authentication from Forensic expert, allowing the application would tantamount to filling the gap in the prosecution case which was impermissible.

It is well settled that the power under Section 311 Cr.P.C though wide is to be exercised sparingly. It is not to be used to fill up any lacuna in the prosecution case. There is no mention of the CD in the initial complaint of the petitioner. There is no mention of the CD in the challan. Its authenticity has not been got verified from the forensic laboratory. It was sought to be produced more than one year and six months after the alleged incident.

The learned trial Court has exercised his discretion and dismissed the application. There is no infirmity in the exercise of the jurisdiction warranting any interference by this Court

Dismissed.

October 22, 2018

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(HARINDER SINGH SIDHU)
JUDGE

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No