

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

109)

CRM-M-44523 of 2019 (O&M)

Date of Decision: 19.10.2019

Ashish Tyagi

...Petitioner

Versus

Rajiv Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Naveen Singh Panwar, Advocate, for the petitioner.
Mr. Ankur Tyagi, Advocate, for the complainant.

AMOL RATTAN SINGH, J. (Oral)

Learned counsel for the petitioner submits that though no doubt it was the discretion of the learned trial court to dismiss the application under Section 311 of the Cr.P.C., as had been filed well after November 09, 2016, i.e. more than 5 years after the complainants' cross-examination had been initially conducted, however, the reason for that was that the complainant was being sought to be summoned for further cross-examination because in the meanwhile he had sent a message on "Whatsapp", allegedly stating that he had filed a false case against the petitioner and that he would withdraw it on 03.01.2019.

Though the date of the said message is not given in the application filed by the petitioner under Section 311 of the Cr.P.C. (copy Annexure P-6, also undated), learned counsel submits that the message was sent on 23.12.2018.

Notice of motion.

At this stage, Mr. Ankur Tyagi, Advocate, appears and accepts notice on behalf of the respondent and has filed a power of attorney, which is ordered to be taken on record.

He submits that the application seeking to recall the respondent-complainant is only a delaying tactic and therefore there would be no cause for this court to interfere with the impugned order.

Having considered the aforesaid argument, even keeping in view the fact that the application under Section 311 of the Cr.P.C. was admittedly filed more than 3 ½ years after the respondent-complainant had been cross-examined, learned counsel for the petitioner further submits that as a matter of fact the respondent had also admitted in his reply to the said application (a copy of such reply having been annexed as Annexure P-7), that “when the alleged messages were shown to be send through whatsapp/text messages, at that time, the respondent/complainant was giving exam under AIBE in Chandigarh and his mobile was lying in the car of the brother of the applicant/accused, which was put by Vivek Tyagi Advocate in that car as the respondent/complainant cannot carry his mobile in the examination centre. So he handed over his mobile to Vivek Tyagi Advocate put his mobile in the car of the brother of the applicant/accused and from the present application, it is much clear that the said alleged messages were send by the brother of the applicant/accused namely Ankit Tyagi”.

His contention therefore is that the respondent herein admitted

that message was sent from his (the respondents') mobile phone, though he denied having sent it.

Without making any comment on the actual merits of the contention raised before this court as regards whether or not the messages were sent by the respondent, which naturally would be a matter to be proved/disproved before the trial court, the petition is allowed, with the impugned order set aside. The trial court is directed to recall the respondent-complainant for further cross-examination, with adequate opportunity to be granted to the petitioner/his counsel to cross examine the complainant.

If, to counter what the petitioner has contended, the respondent-complainant files any application for leading any further evidence, that would be considered on its own merits by the trial court and an appropriate order passed thereon.

19.10.2019
vcgarg/dinesh

(AMOL RATTAN SINGH)
JUDGE

Whether reasoned/speaking: Yes
Whether reportable: Yes