

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

CRR-30-2020 (O&M)

Date of decision: January 07, 2020

Sukhdev Raj Joshi

....Petitioner

Versus

Central Bureau of Investigation

Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Mr. Sumeet Goel, Additional P.P. for the CBI.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 3.1.2020 passed by the Special Judge, CBI, Punjab, SAS Nagar, Mohali dismissing an application filed by the petitioner under Section 311 Cr.P.C. for re-summoning PW3 Kulwinder Kaur for the purpose of further cross-examination.

Brief facts of the case are that one Surjit Kaur filed Criminal Writ Petition No.455 of 1994 for issuance of a writ of *habeas corpus* for releasing her husband Sant Charan Singh, brother-in-law Kesar Singh, Gurdev Singh, Majha Singh, her brother Gurmej Singh and nephew Balwinder Singh from the custody of Tarn Taran police. In the said writ petition one representation dated 24.2.1994 was attached which was addressed to the Inspector General of Police, Crime Branch, Punjab, in

which it was stated that the whereabouts of the detenues are not known and they be got released. Later on, vide order dated 13.9.2019, an enquiry was entrusted to the Sessions Judge, Amritsar to look into the version of the petitioner and the respondents and submit a report. The Sessions Judge, Amritsar held in his report that the allegations of the complainant regarding taking away her male family members are not substantiated. Thereafter, vide order dated 2.5.1997, this Court entrusted the investigation to the CBI to enquire into the allegations of the petitioner. In pursuant thereto, the CBI registered the case/RC No.1(s)/97/SIU-XII/CHG dated 30.5.1997 under Sections 364, 120-B read with Section 218 IPC, at Police Station CBI/SIU-XV/ Chandigarh.

After completing the hearing, the CBI presented the charge sheets in the CBI Court. One of the report was regarding illegal detention of Gurmej Singh and Balwinder Singh in which certain documents regarding the statements of Gurmit Kaur and Kulwinder Kaur were also attached.

Counsel for the petitioner has submitted that the statements of PW2 Gurmit Kaur was recorded on 2.7.2019 and 5.7.2019, whereas statement of PW3 Kulwinder Kaur was recorded on 5.7.2019. Counsel for the petitioner further submits that since the investigation conducted by the CBI was not fair and impartial and the petitioner is falsely implicated, therefore, during the trial PW1 Gurjit Kaur has neither named the petitioner as an accused nor attributed any role to him. Counsel for the petitioner has further submitted that now it has come to the notice of the petitioner that

PW3 Kulwinder Kaur has filed an application before the District Magistrate, Tarn Taran/SSP, Tarn Taran which was proved by producing the officials of the concerned offices as Ex.DW4/B. Counsel for the petitioner has further submitted that the re-examination of PW3 Kulwinder Kaur is necessary to prove the contents of Ex.DW4/B as she is the author of the application and, therefore, the petitioner has moved an application under Section 311 Cr.P.C. for summoning PW11 for the purpose of re-examination by way of further cross-examination to prove the document Ex.DW4/B.

The application was contested by the CBI on the ground that as per the investigation it was found that Gurmej Singh and his son Balwinder Singh were abducted on 20.3.1993 by the petitioner-accused Sukhdev Raj Joshi and other police officials and the witnesses have seen both of them in the police custody in the CIA Staff, Tarn Taran as they and their family members were compelled to produce Baba Charan Singh before Shri Ajit Singh Sandhu, the then SSP, Tarn Taran and, thereafter their whereabouts are not known till date. It is also stated in the application that Gurmit Kaur and Kulwinder Kaur had seen a police party headed by ASI Sukhdev Raj Joshi-petitioner who was Reader to the SSP, Tarn Taran, when they raided their house on 20.3.1993 and took away Gurmej Singh and Balwinder Singh and this fact is corroborated by these two witnesses that after the arrest of Baba Charan Singh, Gurmit Kaur and Kulwinder Kaur had met Shri Ajit Singh Sabdhu, SSP, Tarn Taran for releasing her husband, but in vain. One Mukhtiar Singh has also disclosed that he had seen Gurmej Singh and his son Balwinder Singh, lodged in CIA Staff after their abduction.

It is further alleged that Kulwinder Kaur has been examined as PW3 and she was cross-examined by the defence counsel at length and, therefore, any application or statement of this witness has no bearing on the statement already made by the witness on oath during trial and, therefore, no ground is made out for re-summoning or re-examination of this witness.

The trial Court vide impugned order dated 3.1.2020 dismissed the application with the following observations :-

“5. The present application has been moved by the applicant/accused Sukhdev Raj Joshi, under Section 311 Cr.P.C. for summoning PW3 Kulwinder Kaur for the purposes of re-examination by way of further cross-examination, by taking the plea that now Kulwinder Kaur has filed an application before the office of District Magistrate, Tarn Taran and to prove the authenticity of said application as well as for putting the contents thereof, further cross-examination of Kulwinder Kaur is essential. But keeping in view the facts and circumstances of the present case and after having perused the record carefully, it is found that her present application deserves dismissal. Record reveals that this Kulwinder Kaur has already been examined completely and she has also been cross-examined by the learned defence counsel completely. Though the accused/applicant Sukhdev Raj Joshi has brought on record one application allegedly moved by Kulwinder Kaur before the District Magistrate, Tarn Taran and sought the permission of the Court to re-summon Kulwinder Kaur for the purpose of proving the authenticity of that application and as well as putting the contents of that application and as well as putting

the contents of that application to Kulwinder Kaur but the Hon'ble Supreme Court of India in Mishrilal @ others Vs. State fo M.P. and Ors., has laid down that "*once the witness was examined in chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the Court, even though that witness had given an inconsistent statement before any other Court or Forum subsequently. A witness could be confronted only with a previous statement made by him.*" The ratio laid down in the above titled ruling is fully applicable to the facts and the present case is Kulwinder Kaur has already been examined and cross-examined completely in the present case. Subsequently, she might have given some other version by filing application before the District Magistrate, Tarn Taran, for some extraneous reasons but she cannot be re-summoned to confront her with that very application as a witness could be confronted only with the previous statement made by her.

6. Still further it is pertinent to mention her that the present case has already been time bound by the Hon'ble Supreme Court of India by making an observations which is being reproduced herein below :-

"The petitioners are misusing the process of law. The successive filing of the petition is wholly uncalled for. We direct the trial Court not to delay the trial in any manner and we also request the Court, not to interdict the trial in any petition. We request the concerned trial Court to try the case de die in diem basis as far as possible and decide the matter finally within a period of eight months from today. There shall be no stay of trial by the Courts. It is shocking that for the last 20 years matter is

pending only for quashment of the FIR. When in the earlier round the matter was travelled to this Court there was no room to file the petition for the same very purpose. It seems, it is done to delay the matter. The special leave petitions are dismissed with aforesaid directions.”

7. In the present case, the evidence of the prosecution has already been completed and after recording the statement of the accused under Section 313 Cr.P.C., even in defence 5 witnesses have also been examined and it appears that the present application has been filed at the fag end of the trial with an ulterior motive to delay the trial and hamper the justice. As such, no ground is made out to allow the instant application and the same is hereby dismissed.”

Counsel for the petitioner has argued that while passing the impugned order, the trial Court has not recorded its satisfaction that re-examination/further cross-examination of PW3 Kulwinder Kaur is not required for the just and fair conclusion of the trial.

In support of the argument, the petitioner has relied upon **2012 (1) RCR (Criminal) 662, Sudevanand Vs. State through CBI**, wherein Hon’ble the Supreme Court has held that even the appellate Court can recall a witness for further examination in the light of some new development in the case.

Reliance has also been placed upon **2013(3) RCR (Criminal) 368, Natasha Singh Vs. CBI (State)**, wherein Hon’ble the Supreme Court has held that the Court must examine whether additional evidence, in rebuttal of evidence, is necessary to facilitated in just and proper decision of

the case as the discretionary powers under Section 311 Cr.P.C. are essentially intended to ensure that every necessary measure is taken by the Court to clear any ambiguity insofar as evidence is concerned and also to ensure that no prejudice is caused to anyone.

After hearing counsel for the petitioner and on going through the application filed by the petitioner as well as the reply of the CBI and the impugned order, I find no merit in the present petition.

The only ground taken in the application under Section 311 Cr.P.C. is that PW3 Kulwinder Kaur had given an application on 29.11.2019 to the District Magistrate, Tarn Taran regarding issuance of death certificate of her husband Baljinder Singh as well as Gurmej Singh. In this application it is stated that her husband Balwinder Singh is missing since 1993 and they have been searching him but he has not been found and it was suspected that he had been kidnapped by some criminal elements with whom he had dispute as he was a Constable in Punjab Police. Gurmej Singh is her father-in-law and she was searching for both of them till now. In para 5 of the application, it is stated that she has come to a conclusion that her husband was kidnapped by a gang involved in looting and snatching and the gang has killed her husband and destroyed the dead body and till now she and her family member were under the impression that her husband and father-in-law had kidnapped by the Punjab Police. In para 10 of the application, it is stated that since her husband and father-in-law have died, the Death Certificate be issued with respect to her husband and her father-in-law.

Counsel for the petitioner has exhibited this application by summoning two witnesses from the Office of District Magistrate, Tarn Taran as well as SSP, Tarn Taran as Ex.DW4/B.

A perusal of this application would show that it was primarily addressed to the District Magistrate, Tarn Taran with a prayer to issue a Death Certificate of Balwinder Singh and Gurmej Singh though in the body of this application, a reference is made that on enquiry applicant-Kulwinder Kaur has come to a conclusion that both of them were kidnapped by a gang of looting and snatching in the area. A perusal of this application would also show that this is an application subsequent to recording of the statement of PW3 Kulwinder Kaur and it is allegedly signed by Kulwinder Kaur and Gurmej Kaur.

The manner in which the application is written would demonstrate that it is intended only for obtaining death certificate of Balwinder Singh and Gurmej Singh and the contents of the application may not be read-over to the two ladies who have signed in Punjabi, as a perusal of the vernacular of Annexure P11 show that the first page wherein the allegations that the two persons were kidnapped by a gang and not of the police and not seen by any person and the signatures are only on the second page of the application. Therefore, on the face of it, in the absence of any signatures on the first page (on vernacular), the contents of paras 1 to 7 were never authenticated or certified either by Kulwinder Kaur or Gurmit Kaur. Therefore, even if it is to be treated that they are the signatory of this document, in the absence of signatures on first page of this document,

which is a typed document, it cannot be said that the same was signed after reading the contents of the same.

Since 1993 till 2019 when both these ladies were examined as PW2 and PW3, they are supporting the prosecution version and are sticking to their stand in the line of the investigation conducted by CBI regarding kidnapping of their husband by the police party headed by the petitioner and, therefore all of a sudden after recording their statement, moving of such application by them appears to be a ploy by the petitioner to create some evidence and to delay the trial.

The trial Court has rightly recorded a finding that a witness can be re-examined only for the purpose of confronting with a previous statement made by him/her which is admissible as per the provisions of the Evidence Act. The cross-examination of PW3 Kulwinder Kaur for which the application under Section 311 Cr.P.C. is moved was completed on 5.7.2019, and during the cross-examination their testimony could not be shattered by the defence counsel. Therefore, there was no occasion for these two ladies to move an application Ex.DW4/B by mentioning therein that the police party has not kidnapped her husband.

It is worth noticing that the trial of the case is pending since 1994 and even Hon'ble the Supreme Court in the present case has issued a time bound direction by observing that the petitioner is misusing the process of law and filing successive petitions/applications which is fully uncalled for. The trial is pending for the last 20 years and is now fixed for pronouncement of the final judgment and, therefore, in view the time bound

direction given by the Hon'ble Supreme Court holding that the petitioner is filing totally uncalled for successive applications to delay the trial, I find no merit to differ with the findings recorded by the trial Court.

There is no dispute regarding preposition of law laid down by the Hon'ble Supreme Court in Sudevanand and Natasha Singh's cases (*supra*). However, the same are distinguishable on the facts of the present case wherein a specific direction is given by the Hon'ble Supreme Court for time bound conclusion of the trial, specially in view of the fact that the petitioner is filing the frivolous applications.

There is no merit in the present petition and the same is, therefore, dismissed.

January 07, 2020
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No