

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

**CRM-M-6787-2020 (O&M)
Date of Decision : 17.02.2020**

Nisha Petitioner
Versus

State of Haryana Respondent

CORAM : HON'BLE MR. JUSTICE RAMENDRA JAIN

Present : Mr. Keshav Pratap Singh, Advocate
for the petitioner.

RAMENDRA JAIN, J. (Oral)

Through this petition under Section 482 Cr.P.C., petitioner-accused has assailed order dated 20.01.2020 (Annexure P-5) of the revisional court, dismissing her revision against the order dated 16.12.2019 of trial court, whereby her application under Section 311 Cr.P.C. for recalling PW2 B.S.Sodhi, Investigating Officer, ASI Nafe Singh, PW6 Gaje Singh and L/c Promial for further cross-examination, was dismissed.

Briefly, complainant Azad Singh moved a complaint to Baljeet Singh Sodhi, Bank Manager, State Bank of India, New Grain Market, Rohtak that some unknown person illegally withdrew amount of Rs.30,000/- from his saving account No.10192768035. On forwarding of said complaint by said Bank Manager, to the Police Station City Rohtak , FIR No.325 dated 02.08.2014, under Sections 420, 406, 419, 467, 468, 471 and 120-B IPC was registered.

During investigation, the complicity of petitioner, as a

cashier alongwith three more persons, on particular date when the alleged fraud was committed, was found. Resultantly, they were sent to court to face trial, filing final report under Section 173 (2) Cr.P.C. under the aforesaid Sections.

The learned trial court, after conducting trial held the petitioner and his two co-accused namely Mayank @ Rinku and Rohit @ Rahul guilty under Sections 406, 420, 467, 468, 471, 120-B read with Section 34 IPC, but was of the opinion that they were liable for more severe punishment than he was authorized. Consequently, it referred the case to learned Chief Judicial Magistrate under Section 325 Cr.P.C, for quantum of sentence, vide order dated 09.03.2017.

Pursuant thereto, the learned Chief Judicial Magistrate, after hearing the petitioner, his aforesaid co-accused and the counsel for the State, sentenced them to undergo simple imprisonment with fine of Rs.1,000/- each under the aforesaid Sections, except Section 406 IPC vide order dated 24.03.2017.

Being aggrieved, petitioner approached the lower appellate court against the aforesaid judgment of conviction and order of sentence. Simultaneously, the State also preferred appeal.

Both the cases were heard together. The lower appellate court, vide judgment dated 20.08.2019, setting aside the impugned judgment of conviction dated 09.03.2017 and order of sentence dated 24.03.2017, remanded the case to the learned Chief Judicial Magistrate, Rohtak with direction to re-hear the parties, recall any witness, who has already been examined, and re-examined, if necessary, and decide the same afresh.

After remand of the case, the petitioner moved an application under Section 311 Cr.P.C. for recalling PW2 B.S.Sodhi, Investigating Officer ASI Nafe Singh, PW6 Gaje Singh and L/c Promial. However, learned Chief Judicial Magistrate, acting as Addl. Civil Judge (Sr. Division), Rohtak, who had no power to exercise its civil powers in a criminal case, illegally rejected the said application.

The said exercise of civil powers by the learned Chief Judicial Magistrate is unknown to law. Therefore, the impugned order dated 16.12.2019, in a criminal case, is set aside with direction to learned Chief Judicial Magistrate, Rohtak to decide the application of petitioner under Section 311 Cr.P.C. afresh under its legal powers.

Petition stands disposed of accordingly.

17.02.2020
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No