

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

CRM-M-8256-2020

Date of decision: February 26, 2020

Himanshu Khanna		Petitioner
	Versus	
State of Haryana		Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Umesh Kumar Kanwar, Advocate for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing the order dated 16.1.2020 passed by the learned Additional Sessions Judge, Faridabad vide which the application filed by the petitioner under Section 311 Cr.P.C. to summon additional witnesses for moving a complaint dated 1.9.2017 allegedly filed by the petitioner in Chief Minister Window and the investigation on the same by the police be quashed.

Brief facts of the case are that the petitioner is a complainant in FIR No.754 dated 17.8.2017 under Sections 302, 201, 34 IPC and 25 of the Arms Act, registered at Police Station Saran, District Faridabad for alleged murder of his father-Raj Kumar.

As per the allegations in the FIR, it is stated that the father of the complainant used to ply a Taxi and on 16.8.2017

at 10.00 p.m., Raj Kumar (deceased) informed mother of the petitioner on telephone that he is coming back from a fruit market. Later on, when the mother of the petitioner tried to contact his father, all the three mobile phones of my father were switched off. When the complainant returned back home, he was informed by his mother that she is unable to contact his father as his mobile phones are switched off.

On the next morning, the police came to the house and informed that the dead body of his father was lying on the back seat of the car with scars of knife and poker on the head, abdomen and chest and some unknown persons have killed him.

Thereafter, the police conducted the investigation and nominated Rohit Sharma, Rahul Sharma and one Arvind Kumar as accused in the case, who are facing the trial. Thereafter, the petitioner and his mother appeared as his own witnesses and moved an application under Section 311 Cr.P.C. for summoning the record relating to the complaint dated 1.9.2017, which was allegedly given at the Chief Minister Window with regard to the certain facts that one O.P. Mor was having illicit relations with Mamta Sharma for the last 20 years and at the time of the death of his father, O.P. Mor came to the hospital and stated that the father of the petitioner has taken a loan of Rs.One Lac from him but no weighted was given to this fact by the police. Therefore, the petitioner be permitted to summon the witness of the office of Commissioner of Police, Faridabad to prove

the complaint dated 1.9.2017. The trial Court vide impugned order dated 16.1.2020 dismissed the complaint. The operative part of the order reads as under:-

“6. The present FIR was registered on the basis of complaint moved by Sh. Himanshu Khanna son of deceased Raj Kumar Khanna. After recording the FIR, investigating proceedings were initiated. During investigation statement of the mother of the applicant under Section 161 Cr.P.C. was recorded on 18.8.2017. After thorough investigation challan report was submitted by the police and charges were framed against the accused persons on 13.9.2018.

7. Applicant Himanshu Khanna had appeared in the witness box as PW2 on 5.1.2019. he did not depose even a single word in his examination in chief that the aforesaid O.P. Mor had any illicit relation with Mamta Sharma. These facts were disclosed by Ms. Swaran Khanna while appearing in the witness box as PW11 on 7.8.2019. Thereafter, the present application was filed. It will not be out of place to mention here that the present FIR was registered on 17.8.2017. Statement of Swaran Khanna u/s 161 was recorded on 18.8.2017. In her statement which was recorded under Section 161 Cr.P.C. she did not depose even a single word regarding any illicit relation of O.P. Mor with Ms. Mamta Sharma.

8. No application for further investigation had been filed by the prosecution before framing of

charge or after framing of charge. To my mind present application has been filed by the prosecution just to prolong the case unnecessarily.

9. It is settled law that the application under Section 311 Cr.P.C. can be allowed at any stage before pronouncement of order/judgment if the proposed additional evidence is necessary to decide the case conclusively and effectively. But it cannot be allowed only on the wishes of the prosecution or accused. In the present case to my mind the proposed evidence and the witnesses as mentioned in the application are not necessary to decide the present case. With these observations and without commenting on the merits of the case, the present application under Section 311 Cr.P.C. filed by the prosecution/complainant is hereby dismissed.”

Counsel for the petitioner has argued that the complaint given by the petitioner, wherein there are certain allegations against O.P. Mor and Mamta Sharma, goes to the root of the case, therefore, the trial Court have erroneously dismissed the application filed by the petitioner for summoning the Clerk from the office of the Commissioner of Police, Faridabad to prove the said complaint.

After hearing counsel for the petitioner, I find no ground to differ with the opinion having recorded by the trial Court.

A perusal of the FIR as well as statement of the complainant, who appeared as PW2, nowhere referred to the aforesaid incident that at the time of the death of Raj Kumar, father of

the complainant, said O.P. Mor had visited the hospital and informed that Raj Kumar has taken Rs.One Lac from him or that O.P. Mor is a corrupt person and having illicit relations with Ms. Mamta Sharma. The trial Court has also recorded the findings that even confession statement of Swaran Kaur, mother of the petitioner was recorded under Section 161 Cr.P.C., wherein she has mentioned this fact.

Through out the time when the police was investigating the case, no such fact was brought to the notice of the police so as to verify the authenticity of the same. The trial Court has further recorded a finding that after submission of the challan, the complainant has not moved any application for further investigation with reference to the aforesaid complaint and now the case is fixed for prosecution evidence, he want to bring on record an application not in the line of the version of the complainant and, therefore, it is not necessary to allow the same.

After hearing counsel for the petitioner, I find no ground to differ with the opinion formed by the trial Court.

Accordingly, the present petition stands dismissed.

February 26, 2020
satish

(ARVIND SINGH SANGWAN)
JUDGE

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