

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

CRM-M-8247-2020

Date of decision: February 26, 2020

Om Parkash ChhabraPetitioner
Versus
Chand Parkash Chhabra and othersRespondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Bindu Goel, Advocate for the petitioner.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 14.8.2019 passed by the trial Court vide which the application filed by the petitioner-complainant under Section 311 C.P.C. in Criminal Complaint No. CHI/31547/2013 DATED 19.10.2011 under Sections 420, 465, 467, 468, 471, 506, 120-B IPC was dismissed.

Brief facts of the case are that the petitioner has filed the aforesaid complaint with the allegations that in the year 1967 he had taken two shops from accused/respondent No.2 on rent. Later on, in the year 1981, the brother of the petitioner, namely Suraj Parkash and Chand Parkash Chhabra (complainant-respondent No.1) joined him in the business and they created a firm M/s Chhabra Sweets and Cafeteria. Later on, a dispute arose amongst the brothers with regard to the firm which led to civil and criminal litigation between the three brothers/their LRs.

It is further stated that the petitioner filed a suit for declaration, separate possession and rendition of accounts against his two brothers on 8.1.1995, which was decided in favour of the petitioner vide judgment and decree dated 4.3.2004 and appeal filed before the lower appellate Court was dismissed on 27.7.2005 and the appeal, i.e. RSA No.96 of 2006, filed by the brother/LRs of the is pending admitted. It is further stated that in the year 2009, the petitioner came to know about the forged agreement dated 24.10.2001 which was allegedly executed by respondent No.2 in favour of respondent No.1 in which the respondent No.1 claimed himself to be in exclusive tenant of the shop. Later on, a suit for injunction was filed by respondent No.1 against respondent No.2 which was decreed by the trial Court vide judgment dated 14.2.2007.

On the basis of the aforesaid facts, the criminal compliant is filed which is pending before the trial Court.

At this stage, when the prosecution evidence was closed as well as the defence evidence was also closed and the case is fixed for final arguments, the petitioner filed an application under Section 311 Cr.P.C. with the allegations that it has come to his notice that there is another agreement dated 22.10.2001 which was executed between the LRs of deceased brother of petitioner, namely, Suraj Parkash and respondent No.2 in which, the LRs of Suraj Parkash allegedly handed over the tenancy of the shop to respondent No.2. Therefore, this is a forged agreement and need to be produced on record for the just and fair conclusion of the trial Court.

The trial Court vide impugned order 14.8.2019 dismissed the application. The operative part of the order reads as under :-

“4. Perusal of the file shows that the present complaint has been filed by the complainant on 19.10.2012 and the accused were summoned to face trial under Section 420/465/467/471 IPC vide order dated 31.1.2013. Therefore, pre-charge evidence was led by the complainant and charge were framed against the accused persons on 8.3.2017. Thereafter, the evidence was led by the complainant and now the case was fixed for arguments after completion of defence evidence. Thereafter, the application under Section 311 Cr.P.C. has been moved by the complainant. As per the file, the present application under Section 311 Cr.P.C. is fourth application under Section 311 Cr.P.C. moved by the complainant since the start of present case. The complainant had moved an application under Section 311 Cr.P.C. two times earlier after completion of after charge evidence and he did not succeed in the same. He also moved an application under Section 294 Cr.P.C. prior to the present application and same was dismissed by my learned predecessor. As per the file, an application under Section 311 Cr.P.C. was moved by the complainant on 4.1.2018 for summoning the Record-Keeper to produce the Court file of Sh A.K. Jain, the then CJJD, Jalandhar but the same was also dismissed by my learned predecessor. Even in the present application the complainant has sought the summoning of the Record-Keeper to produce the said file again. It is clear from the record that

earlier applications were dismissed and even the revision petition was also dismissed. The complainant has not mentioned any new fact which is required to be proved by him by leading additional evidence under Section 311 Cr.PC. The complainant has stated that he wants to prove the forged rent deed dated 24.10.2001 which is mark Y which he could not prove earlier. It is clear that complainant has led evidence thrice in the present case. Firstly, he led preliminary evidence, thereafter, he led pre-charge evidence and thereafter he has led after charge evidence. The fact regarding proving of agreement was in the knowledge of the complainant every time he led the evidence but he did not prove the same to the reasons best known to him. Now, after lapse of 7 years the complainant has realized that he is required to prove the agreement which he did not prove earlier. The complainant has not been able to clarify any reasonable ground to prove as to why he had to led sufficient evidence despite availing various opportunities. The factum that he has now realized that his evidence is not sufficient would not entitle him to led evidence under Section 311 Cr.P.C. He has placed reliance upon judgment i.e. AIR 1957 SG 637 but the said judgment is not applicable to the present case because the court is required to grant sufficient opportunities to the complainant to led cogent and unimpeachable evidence. Now, after elapse of such a long period the complainant can be allowed to start leading evidence on a fact which was in his knowledge. The complainant has not been able to justify as to why he never proved the

said document i.e agreement dated 24.10.2001 mark Y. Now, granting any further opportunity after completion of all the evidence would ultimately cause prejudice to the accused and would be against the principal of speedy trial. The present case is at final stage and now this Court does not deem it fit to grant any opportunity to the complainant to lead evidence as no reasonable ground has been presented by the complainant.

5. Further, the complainant has not been able to clarify as to why he wants to examine witnesses of Provident Fund, Corporation or electrical department or Industrial Department as he has not mentioned anything about the said witnesses. Further, the complainant has not been able to clarify as to why he wants to examine Stamp Vendor to produce the record of stamp dated 24.10.2001 of some other agreement whereas the same is not in dispute. The present application is not supported by any cogent reasons and therefore, the same does not hold any merit and is hereby dismissed.”

Counsel for the petitioner has argued that the petitioner was not aware of the agreement which was allegedly executed by the LRs of Suraj Parkash Chhabra, second brother of the petitioner with respondent No.2-accused, the owner of the property and, therefore, on coming to know this fact he has moved an application for placing it on record by way of leading additional evidence and summoning the executant and the witnesses of this agreement. Therefore, the same

be allowed and the petitioner be permitted to lead additional evidence.

Counsel for the appellant has argued that it is well settled principle of law that an application under Section 311 Cr.P.C. can be allowed at any stage of the trial if it is just and essential for the proper adjudication by the trial Court.

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

The petitioner, in the complaint filed against respondents No.1 and 2 has nowhere setup a case with reference to this present agreement dated 22.10.2001 allegedly executed by the LRs of second brother, namely, deceased late Suraj Parkash Chhabra and respondent No.2-accused/owner. The complaint is based on agreement dated 24.10.2001 allegedly executed between the other brother Om Parkash Chhabra and the owner which was followed by the decree of injunction. Moreover, the LRs of Suraj Parkash Chhabra are neither arrayed as accused in the present complaint nor have any concern with the alleged agreement between accused Nos.1 and 2. Therefore, by producing the said agreement on record, will no way help the complainant to prove the guilt of the accused persons, who are facing the trial. Even if the said agreement is produced on record, it will not enable the trial Court to record any finding with reference to accused Nos.1 and 2, who have no concern with the accused facing the trial, as it relates to the second brother of

petitioner Suraj Parkash Chhabra, whose LRs have allegedly executed the agreement to and are not arrayed as an accused.

Therefore, the petitioner cannot be permitted to lead additional evidence with reference to the allegations which are not part of the complaint. Even otherwise, the application is filed at the fag end and the alleged agreement need to be proved by leading the evidence which will amount to re-opening of the trial. Even a perusal for the application filed under Section 311 Cr.P.C. with regard to the complainant witnesses is totally vague and nothing has been stated about the relevancy of the proposed evidence regrading the controversy in dispute.

The trial Court also recorded a finding that this is the 4th application filed by the complainant under Section 311 Cr.P.C. as the earlier two applications filed by the petitioner at the stage of after charge evidence were dismissed and even an application filed under Section 294 Cr.P.C. was also dismissed by the Court and the said orders have attained finality.

In view of the above, I find no ground to interference in the order passed by the trial Court and the present petition is, therefore, dismissed.

February 26, 2020
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(ARVIND SINGH SANGWAN)
JUDGE

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