

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220

CRR-661-2020(O&M)

Date of Decision:18.09.2020

Randhir Singh and others

.....Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Navkiran Singh, Advocate,
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana,
for the respondent-State.

Mr. Hameet Hasan, Advocate,
for the complainant.

HARI PAL VERMA, J.(Oral)

The matter has been taken up for hearing through video conferencing due to outbreak of COVID-19.

Petitioners have filed the present criminal revision petition against the order dated 06.02.2020 passed by learned Additional Sessions Judge, Kurukshetra, whereby the application filed by the complainant and other witnesses under Section 311 Cr.P.C. to recall them as witnesses in the case, was allowed.

The petitioners-accused are facing trial in FIR No.199 dated 16.04.2018 under Sections 302, 307, 323, 324, 447, 506, 511, 148, 149, 120-B IPC and Sections 25, 27 of the Arms Act, registered at Police Station

Shahbad, District Kurukshetra.

The aforesaid FIR was registered at the behest of complainant-Rukmudeen. As per the FIR, the accused Kirpal Singh son of Randhir Singh had taken forcible possession of the land measuring 5 kanals 7 marlas, situated in village Kharindwa, which is a place of graveyard. Because of this land, there was a dispute between the complainant, members of the Muslim community viz-a-viz Kirpal Singh etc. and the cases were pending in the Court. On 07.01.2018, the WAKF Board got the demarcation of the land done on the spot and had constructed the boundary wall. As there were graves on the spot, the community members had taken possession of the graveyard and it is due to this reason, accused Kirpal Singh and his family members used to have a grudge against the community of the complainant and were waiting for an opportunity to take possession of the land. Accused Jasmer Singh son of Sampuran Singh, who is uncle of Kirpal Singh had filed a complaint regarding possession against Julfan son of Ali Hassan etc. in Police Station Shahbad, on which FIR No.11 dated 08.01.2018 under Sections 148, 149, 427, 447 IPC has been registered at Police Station Shahbad. Complainant's community has got possession of the spot. On 16.04.2018 at around 11 AM, when the complainant and Shokan son of Asmat Ali, Julfan son of Ali Hassan, Kasu son of Asmat Ali, Jaiky son of Rukma, Rukma son of Toni, Papla son of Silewan, Usman son of Firoz Khan, Dina son of Namma, their wives and other people of the community were present on the spot, the accused persons came in a car from the side of Shahbad in three tractor-trolleys. Approximately, 220/300 persons were armed with weapons. Kirpal Singh son of Randhir Singh was having a .12 bore double barrel gun, Jasmer son of Sampuran Singh was having a cutter.

The accused as mentioned in the FIR surrounded the complainant and other

persons from the complainant's side, whereas Jasmer Singh had said that let the complainant be taught a lesson for taking possession of the land, Kirpal Singh fired a gunshot in the chest of Mangat Khan son of Rahamdin. Bagail Singh resident of Kahangarh, District Kurukshetra fired a gun shot with a gun he was holding on the forehead of Anguri Devi. Hasmat Ali was hit by a gun shot near his neck by Jaswinder Singh son of Kirpal Singh with his country-made gun and thereafter, accused persons and 220/300 people, who were holding weapons like '*gandasa*', *cutter* and *axe* launched an attack on the complainant/Muslim community. In the aforesaid incident, Mangat Khan died because of gun shot injury. The accused also fired in the air on the spot, in which, the complainant and some other people of the Muslim community were injured.

Petitioners in the instant revision petition have been named as accused in the FIR. Learned counsel for the petitioners has argued that challan in the case has been presented against 30 accused in totality and as per challan, two deaths have occurred in the said incident, namely, Mangat Khan and Fakirya. During trial, complainant-Rukmudeen son of Nasirudeen appeared as PW-4 on 11.04.2019, whereas Kashu @ Kasim son of Asmat Ali appeared as PW-8 on 17.05.2019 and Yasin son of Noor Mohammad appeared as PW-10 on 17.07.2019 and all these three witnesses were declared hostile by the public prosecutor as they did not support the case of the prosecution. However, on 11.12.2019, an applicatoin under Section 311 Cr.P.C. was filed by the witnesses, namely, complainant-Rukmudeen-PW4, Kashu @ Kasim-PW-8 and Yasin-PW-10 to recall them as witnesses and be re-examined in the present case. It has been pleaded in the application that they recorded their statements under pressure and fear of the relatives of the

accused, namely, Ranjeet Singh son of Sampuran Singh, Nirmal Singh son of Ranjeet Singh, Kala son of Ranjeet Singh, Gurjinder Singh son of Angrej Singh and Bhagal Singh and because of their pressure, they deposed in favour of the accused persons and have not disclosed true facts before the court. He has further argued that there is no evidence as regards threat or pressure due to which the witnesses deposed falsely. They have not produced any evidence that any threat or pressure was ever exerted upon these witnesses. The witnesses should not be re-called or re-examined to deny the evidence when such witnesses have already been examined before the court. Therefore, once PW-4, PW-8 and PW-10 have already been examined, then it would be unjust to allow such witnesses to be re-called and re-examined to deny the evidence which they have already given before the court. Such witnesses have been allowed to be re-examined, despite the fact that they have ample opportunities to depose freely, it would be a mockery of the judicial system. Even otherwise, the application filed by the witnesses under Section 311 Cr.P.C. was not bonafide and, was rather, based on an after-thought. It is after a period of about five months of their examination, the present application was filed.

Learned counsel for the petitioners has placed reliance upon the judgments of Hon'ble Supreme Court in **Mishrilal Versus State of M.P., 2005(2) Apex Criminal 224** and **Rajaram Prasad Yadav Versus State of Bihar and another, 2013(3) R.C.R.(Criminal) 726** to support his contentions.

Heard learned counsel for the petitioners and perused the impugned order.

The pleaded ground on which the witnesses filed the

application under Section 311 Cr.P.C. is that the witnesses were put under fear and threat by the accused and their relatives and for this reason, they recorded some false facts in favour of the accused persons and in this manner, they have not been able to bring true facts before the court. The learned trial court has given a complete justification and has observed that it is obligatory on the court to summon, examine or re-call or re-examine any person or witness, where the evidence of any person appears to be essential for the just decision of the case. The provision of Section 311 Cr.P.C. is to impart justice and to find out the truth. The assurance of a fair trial is the first imperative of the dispensation of justice and fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause, which is being tried, is eliminated. In this case, there are clear allegations that the witnesses sought to be re-examined were threatened and forced to give false evidence. The dispute is regarding land between two communities of the village, which led to the alleged occurrence and resulted into death of two persons. Therefore, in order to have a fair opportunity to the complainant, learned trial court has allowed the application filed under Section 311 Cr.P.C., thereby allowing the witnesses to be re-called or re-examined in the case. Moreover, the witnesses sought to be re-examined are further subject to the cross-examination and therefore, this Court does not find any illegality in the impugned order passed by learned trial court. However, it is made clear that the court should not be influenced during trial, merely because the witnesses, who were examined earlier, have been allowed their re-examination.

Moreover as held in the case of **Rajaram Prasad Yadav's case**

(supra), the object of Section 311 Cr.P.C. simultaneously imposes a duty on

the court to determine the truth and to render a just decision and since the court has shown its satisfaction to examine such witnesses, this Court does not find any illegality in the impugned order dated 06.02.2020 passed by learned trial court.

Accordingly, the present criminal revision petition is dismissed.

However, it is made clear that the observations made hereinabove shall not be construed as an expression of opinion on the merits of the case. The trial Court shall not be influenced with the observations made hereinabove in any manner.

September 18, 2020
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No