

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

**CRM-M-37783-2019 (O&M)
Date of decision: 28.01.2020**

Rohit Mandhok

....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Dr. Anmol Rattan Sidhu, Sr. Advocate with
Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of the order dated 17.08.2019 passed by the trial Court in FIR No.234 dated 15.11.2016 under Sections 307/506 of the Indian Penal Code (for short 'IPC') and Sections 25/54/59 of Arms Act, 1959, registered at Police Station Dera Bassi, District SAS Nagar (Mohali), vide which application under Section 311 of the Code of Criminal Procedure (for short 'Cr.P.C.') filed by the prosecution, was allowed.

Brief facts of the case are that the aforesaid FIR was registered on the statement of Reena Sharma wife of petitioner Rohit Mandhok with the

allegations that their marriage was solemnized about one and half years ago and the petitioner started putting pressure on her to take divorce. It is further stated in the FIR that on 14.11.2016, when both of them were travelling in a car, the petitioner took out his pistol and fired upon the complainant and the bullet struck on the left side of her stomach. Thereafter, the petitioner was arrested and released on regular bail and is facing the trial. Challan stands presented and the charges were framed on 03.06.2017 under Sections 307/506 IPC read with Sections 25/54/59 of Arms Act.

When the challan was presented, the prosecution had not taken any permission from the Court for obtaining the sanction under Section 39 of the Arms Act from the District Magistrate, at a later stage and after about two years, when the Investigating Officer/ASI Paramjit Singh appeared in the Court for recording his statement, a copy of the sanction order was handed over to counsel for the petitioner and an objection was raised in this regard. Thereafter, the prosecution moved an application under Section 311 Cr.P.C. for summoning a Clerk from the office of District Magistrate, SAS Nagar (Mohali). In the application, it is stated that District Magistrate, SAS Nagar (Mohali) has granted the sanction for prosecution of the petitioner, which may be allowed to be placed on record, otherwise, right of the complainant will be prejudiced, as summoning of a Clerk from the office of District Magistrate, SAS Nagar (Mohali) is necessary to be examined for fair decision of the case.

This application was contested by the petitioner by filing the reply, in which it is stated that challan was presented on 01.04.2017 and at

that time, no sanction was obtained under Section 39 of Arms Act and was not produced on record. It is further stated in the reply that as per Section 39 of Arms Act, *no prosecution shall be instituted against any person in respect of any offence under Section 3 without the previous sanction of the District Magistrate* and therefore, procuring the sanction order subsequent to submission of challan, cannot cure the defect in the prosecution/investigation. It is also stated in the reply that by filing the application under Section 311 Cr.P.C., the prosecution is trying to fill up the lacuna in the evidence and therefore, the application be dismissed.

The trial Court, vide impugned order dated 17.08.2019, allowed the application, by passing the following order: -

*“...In the present case, inter-alia, challan under Section 25 of the Arms Act was presented on 01.04.2017 and the charge was framed on 03.06.2017. No doubt, it was incumbent upon the prosecution to have sought the sanction for the prosecution of the accused from District Magistrate prior to the submission of challan. However, late submission of the said sanction could not be termed as illegal. If the sanction is produced by the prosecution, it has to be given due opportunity to prove the same. **“The admissibility of a document and effect which it would have on the merits of the case has to be considered at the time of final argument.”** In the considered opinion of this Court, affording an opportunity to the prosecution to prove a document would not cause any prejudice to the accused as the*

accused would have the ample opportunity to cross-examine the said witness.

*Authority relied upon by the defence, titled as **Manpreet Singh Vs. State of Punjab (supra)** is distinguishable from the facts of the present case. The said judgment has been passed in a case where the petitioners had assailed the order of framing charge before the Hon'ble High Court. Whereas in the present case, application under Section 311 Cr.P.C. for summoning of the witness after framing of the charge is under consideration. In the said case, the Hon'ble High Court had passed the order in quashing proceedings exercising the extra judicial power under Section 482 Cr.P.C. Moreover, in the present case, there are also charges under Section 307, 506 IPC along with sanction 25 of the Arms Act, as oppose to the said judgment, where charge was only under Section 25 of the Arms Act.*

*Similarly, in **Smt. Javitri Devi Vs. State (supra)**, the Hon'ble Delhi High Court quashed the charge-sheet framed against the accused as well as the subsequent proceedings while exercising the power under Section 482 Cr.P.C.*

Consequently, the present application is allowed. Witness sought to be examined by the prosecution i.e. concerned clerk to District Magistrate be summoned along with remaining unexamined witnesses for 30.08.2019..."

Learned senior counsel for the petitioner has assailed the

impugned order passed by the trial Court on the ground that it is a pre-condition under Section 39 of Arms Act that no prosecution shall be instituted against a person without the previous sanction of the District Magistrate and in the instant case, the sanction is sought to be produced on record at a belated stage. It is further argued that the challan was presented on 01.04.2017; charges were framed on 01.06.2017 and the trial is going on for the last more than two years and the application was moved at a belated stage, just to fill up the lacuna in evidence. It is next argued that a perusal of the sanction order reveals that Senior Superintendent of Police, SAS Nagar (Mohali), in his letter dated 01.07.2019, has recommended for granting sanction, as the Investigating Officer/ASI Paramjit Singh has produced the arms before the SSP and then it came to the notice that in the aforesaid FIR registered against the petitioner, the accused could not produce any licence or permit and since the challan is not presented, an opinion was formed by the SSP that the accused-petitioner, by keeping unlicensed pistol in his possession, has committed the offence under Sections 25/54/59 of Arms Act, therefore, sanction to prosecute him be granted and accordingly, it was granted by the District Magistrate on 02.07.2019.

Learned senior counsel for the petitioner has further argued that by the time, when the application was moved, challan was already presented. Learned senior counsel has referred to a judgment passed by this Court in **CRM-M-30499-2014 (Manpreet Singh Vs. State of Punjab)**, dated **16.01.2017**, wherein, while relying upon the judgment of Delhi High Court in **Smt. Javitri Devi Vs. State, (Delhi) 1971 CriLJ 1340**, it is held that

sanction of the District Magistrate, before prosecution of the accused, is necessary and is a condition precedent and in absence of the same, no accused could have been charge-sheeted for the offence. This Court quashed the order of the trial Court framing charge under the Arms Act, however, held that it will not preclude the prosecution from filing a fresh complaint after obtaining proper sanction as per the mandate and requirement under Section 39 of the Arms Act, if there is no legal impediment for doing so.

In reply, learned State counsel has, however, opposed the prayer on the ground that statements of all the witnesses have already been recorded, statement of the accused under Section 313 Cr.P.C. has also been recorded and even the defence evidence is completed on 08.01.2020 and the case is now fixed for final arguments, therefore, the present petition deserves to be dismissed. It is argued that there are serious allegations against the petitioner that he, by using the illegal weapon (pistol), fired upon his wife and therefore, he is facing the primary charge under Sections 307/506 IPC along with Sections 25/54/59 of Arms Act. It is further argued that there is no challenge to the order dated 03.06.2017, framing charge against the petitioner and only challenge in the present petition is to the application filed by the prosecution under Section 311 Cr.P.C., vide which a Clerk from the office of District Magistrate, SAS Nagar (Mohali) was permitted to be examined as additional prosecution witness to prove the sanction order and therefore, the trial Court, within the scope of Section 311 Cr.P.C., has rightly allowed the application, as the same was required for the just and proper decision of the case.

After hearing learned counsel for the parties, I find no merit in

the present petition, for the following reasons: -

- (a) The judgment relied upon by the petitioner pertains to challenge to the order framing charge under the provisions of Arms Act, whereas in the present case, the petitioner has never challenged the order dated 03.06.2017, framing charge; rather the order under challenge in this case is dated 17.08.2019, vide which an application under Section 311 Cr.P.C. was allowed and prosecution was granted permission to record statement of a Clerk from the office of District Magistrate, SAS Nagar to prove the sanction order, therefore, the judgment in **Manpreet Singh's** case (supra) is distinguishable on facts of the case.
- (b) The trial Court, while allowing the application, recorded its satisfaction that the same is required for just and fair decision of the case, as the prosecution has a right to prove the sanction order. The trial Court has clearly held that admissibility of sanction order will be seen on merits at the time of final arguments and therefore, in view of judgment of the Hon'ble Supreme Court in **Dr. Rajesh Talwar's** case (supra), I find no ground to differ with the findings recorded by the trial Court.
- (c) It is admitted case of both the parties that entire evidence including the additional evidence stands concluded and the case is now fixed for final arguments, therefore, I find no ground to interfere in the findings recorded by the trial Court that admissibility of the sanction order will be seen at the time of

final arguments and the additional evidence was only to prove the sanction order.

With the observations made above and finding no illegality in the impugned order, present petition is dismissed.

28.01.2020
vishnu

[ARVIND SINGH SANGWAN]
JUDGE

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