

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

CRM-M-6228-2021
Date of Decision: April 09, 2021

Jugraj Singh and anotherPetitioners

Versus

State of Punjab and othersRespondents

CORAM: Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Amit Arora, Advocate, for the petitioner.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through Video Conferencing.

Challenge in the present petition is to the orders passed by the Courts below, whereby an application moved by complainant-respondent Nos. 2 and 3, seeking permission for comparison of alleged signatures of Kulwant Singh on the alleged agreement to sell dated 28.07.2009 with his specimen/standard admitted signatures on Krishi Card issued by the Punjab National Bank, Khem Karan Branch, from a handwriting and fingerprints expert, was allowed.

The aforesaid application was filed in a complaint filed by the complainants, which is pending adjudication before the trial Court. The complainants are the widow and daughter of late Kulwant Singh. In the said complaint, they have averred that the agreement to sell dated 28.07.2009 allegedly executed by late Kulwant Singh, was forged and fabricated by petitioner-Jugraj Singh in connivance with the witnesses, stamp vendor

and deed writer. The petitioners are the respondent Nos. 1 and 2, in the said complaint.

Vide order dated 15.04.2017 passed by the trial Court, the petitioners along with other accused, were summoned to the face the trial for the offence under Sections 420 and 120-B IPC.

Thereafter, as noticed above, when the case was at after charge evidence stage, the application moved by the complainants for comparison of alleged signatures of Kulwant Singh on the alleged agreement to sell dated 28.07.2009 with his specimen/standard admitted signatures on Krishi Card, from a handwriting and fingerprints expert, was allowed vide order dated 14.01.2020 and the revision petition against the said order, was also dismissed by the learned Additional Sessions Judge, Tarn Taran, vide order dated 06.03.2020.

Still aggrieved, the petitioners have filed the present petition.

Learned counsel for the petitioners vehemently contends that the orders passed by the Courts below are illegal and perverse, inasmuch as the application filed by the complainants for comparison of the signatures of Kulwant Singh, at the after charge evidence, was not maintainable. It is next submitted that no such application was filed by the complainants at the pre-charge evidence. Still further, the application before the trial Court was filed without mentioning any Section in the cause title and the learned Additional

Sessions Judge, Tarn Taran, has wrongly treated the said application, as the one filed under Section 311 Cr.P.C.

It is further contended by the learned counsel for the petitioners that it is the case of the complainants that the signatures of Kulwant Singh, on the agreement to sell, had been forged with the connivance of the other co-accused, but while leading the pre-summoning and pre-charge evidence, no material was brought on record by the complainants. Thus, the application was filed by the complainant in order to fill in the lacunae. It is yet further submitted that even otherwise, the complainants cannot be allowed to dispute the agreement to sell in the criminal proceedings, particularly, when a suit for specific performance filed by petitioner No.1-Jugraj Singh, in respect of the said agreement to sell, is pending adjudication before the trial Court. Learned counsel for the petitioners would argue that the complaint filed by the complainants is a counterblast to the aforesaid civil suit filed by petitioner No.1-Jugraj Singh.

While relying upon the judgment of the of the Hon'ble Apex Court in Rajaram Prasad Yadav Vs. State of Bihar and another, 2013(3) RCR (Criminal) 726, it is contended that the powers under Section 311 Cr.P.C., should be exercised judiciously and not arbitrarily. Reliance is also placed on the judgment of the learned Single Bench of this Court in Jagjit Singh Vs. Satinderjit Singh, 2013(8) RCR (Criminal) 3010.

After hearing the learned counsel for the petitioners, I do not find any merit in the present petition.

The petitioners do not dispute the existence of the agreement to sell. A perusal of the reply to the application filed by the petitioners before the trial Court (Annexure P.4), would show that the petitioners are not disputing the existence of the agreement to sell. The complaint was filed by the complainants alleging therein that the said agreement to sell had been obtained by way of forging the signatures of Kulwant Singh thereon.

The Courts below have only granted the prayer of the complainants for examination of the signatures of Kulwant Singh on the agreement sell with the specimen/standard signatures of Kulwant Singh. As a matter of fact, the orders passed by the Courts below would only ensure the proper adjudication of the lis. The petitioners have failed to show as to how and what prejudice has been caused to them.

The judgment of the Hon'ble Apex Court in Rajaram Prasad Yadav's case (supra) relied upon by the counsel for the petitioner, rather justifies the impugned orders. In the said judgment, it has been held by the Hon'ble Apex Court that the exercise of the widest discretionary power under Section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive, speculative presentation of facts and that such powers must be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection.

The Hon'ble Apex Court, in Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Others, (2006)3 SCC 347, while

examining the powers of Court under Section 311 Cr.P.C. has held that there is a duty cast upon the Court to arrive at the truth by all lawful means. It was held as under:-

“25. In this context, reference may be made to Section 311 of the Code which reads as follows:-

"311. Power to summon material witness, or examine person present.

Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness or examine any person in attendance, though not summoned as a witness or recall and re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case."

The section is manifestly in two parts. Whereas the word used in the first part is "may", the second part uses "shall". In consequences, the first part gives purely discretionary authority to a Criminal Court and enables it at any stage of an enquiry, trial or proceeding under the Code (a) to summon any one as a witness, or (b) to examine any person present in Court, or (c) to recall and re-examine any person whose evidence has already been recorded. On the other hand, the second part is mandatory and compels the Court to take any of the aforementioned steps if the new evidence appears to it essential to the just decision of the case. This is a supplementary provision enabling, and in certain circumstances imposing on the Court the duty of examining a material witness who would not be otherwise brought before it. It is couched in the widest possible terms and calls for no limitation, either with regard to the stage at which the powers of the Court should be exercised, or with regard to the manner in which it should

be exercised. It is not only the prerogative but also the plain duty of a Court to examine such of those witnesses as it considers absolutely necessary for doing justice between the State and the subject. There is a duty cast upon the Court to arrive at the truth by all lawful means and one of such means is the examination of witnesses of its own accord when for certain obvious reasons either party is not prepared to call witnesses who are known to be in a position to speak important relevant facts.

26. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the Court to summon a witness under the Section merely because the evidence supports the case for the prosecution and not that of the accused. The section is a general section which applies to all proceedings, enquiries and trials under the Code and empowers Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the Court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind."

This Court is of the opinion that the orders passed by the Courts below would only pave the way for proper and effective adjudication of the lis and thus, the same have neither resulted in any miscarriage of justice to the

petitioners, nor would it be a case of causing any prejudice to the rights of the petitioners, in any manner.

In view of the above, I find no illegality or perversity in the orders passed by the Courts below, which may warrant any interference by this Court in the present petition.

Hence, the present petition is dismissed.

April 09, 2021
ds

(HARNARESH SINGH GILL)
JUDGE

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