

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 744 of 2020 (O&M)

Date of decision : 1.7.2021

Suman

...

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr.Vivek Sheoran, Advocate for the petitioner.

Mr.Gaurav Bansal, Assistant Advocate General,
Haryana.

...

H. S. Madaan, J. (Oral)

Case taken up through video conferencing.

CRM-14081-2021

This is an application for pre-ponment of hearing in the
main petition which is fixed for 8.9.2021.

Heard.

The application stands accepted. The main petition is
pre-poned and taken up today.

Main case.

Feeling aggrieved by the order dated 15.1.2020 passed by
Sessions Judge, Sonapat, dismissing her application under Section
311 Cr.P.C., for her re-examination, the complainant has approached
this Court by way of filing the present criminal revision petition.

Briefly stated, facts of the case, as per the prosecution story

are that on 8.10.2018, at about 2.00 a.m. Accused Ajit and Tollu, armed with pistols trespassed in the residential house of the complainant Suman situated at village Mehandipur, District Sonapat. Tollu pointed a pistol at the complainant, whereas Ajit fired a shot at husband of the complainant – Jasbir, hitting him in the chest and thereafter they ran away. As a result of suffering the bullet injury, Jasbir had died. The incident had been witnessed by complainant Suman as well as, Krishan brother of the deceased and one Satish. The motive for the incident, as per the prosecution version, was money dispute between the accused and the deceased. On statement made by the complainant to the police, formal FIR was registered. The matter was investigated. Accused were arrested in this case. On completion of investigation, challan against the accused was prepared and filed in the court.

After framing of formal charge, trial in the case proceeded, during the course of which, statement of complainant Suman was recorded in the Court on 26.2.2019, wherein she provided the eyewitness account of the incident fully supporting the prosecution story with regard to the accused. She was subjected to lengthy cross examination. Thereafter, she filed an application under Section 311 Cr.P.C. for her re-examination for the reason that on 26.2.2019 when her statement was recorded, she was under pressure of the local police, which had coerced her to give statement against the accused – Ajit. As a matter of fact, the local police had wrongly challaned Ajit and the police had threatened the complainant that if she did not

depose against Ajit, then she would be implicated in a false case and for that reason as pleaded now in the application, that actually on day of the incident it was dark and the complainant had not seen Ajit. Therefore, she craved for acceptance of the application.

That application was dismissed by learned Sessions Judge, vide impugned order, the operative part of which being as under :-

“Heard. The application in hand has not been forwarded by learned Public Prosecutor. As per prosecution case, the complainant was sleeping in her house alongwith her husband Jasbir, since deceased while her brother-in-law (Jeth) namely, Krishan and one Satish resident of Murthal were sleeping in another room. At about 2.00 a.m., accused Ajit forcibly entered into the house and shot her husband dead and she had lodged the FIR. She was examined in the court on 26.2.2019 and was also cross-examined at length. She had reiterated her version setup in the FIR while deposing in the court. Now, this application has been moved and it appears that the parties have entered into a compromise and she wants to resile from her earlier version. She had deposed in the court under oath and never levelled any allegation against the police or that she has been pressurized by the police to depose against the accused. The

application in hand is just a result of an after thought and to hood wink the court. In these circumstances, the application being meritless is ordered to be dismissed.”

Feeling aggrieved, the complainant has filed the instant revision petition.

I have heard learned counsel for the revisionist – complainant, learned State counsel, besides going through the record and I find that there is not even an iota of merit in this revision petition.

The incident having taken place at the residential house of the complainant - Suman, her presence there at the relevant time comes out to be natural and probable. It was she, who had set the criminal machinery into motion by reporting the matter to the police giving the detailed version, naming both the accused. The matter was investigated. As it transpires, Joginder @ Tollu, was found to be innocent by the police and was not sent up to face trial. In her statement in the Court, complainant had toed the lines of prosecution categorically stating that Tollu had pointed a pistol at her while Ajit had fired a fatal shot at her husband. In her cross examination she stood her ground. As it seems subsequently, under some pressure or some allurements, she agreed to give clean chit to the accused and for that reason, moved the application in question. It cannot be believed that the local police would exert pressure and coercion upon the complainant to depose falsely against the accused. Even if for a

moment it is believed that the local police had done so, nothing prevented the complainant from informing the trial Court in that regard and then the trial Court could have taken appropriate action in the matter.

A perusal of her statement goes to show that it was read over and explained to her and then thereafter she had put her signatures on her statement. It is not believable that the local police would have the courage to pressurise the witness to depose in a particular manner before Sessions Judge of the District, because if it had been so done and the complainant had disclosed that fact to the learned Sessions Judge, things could have been quite hot for such police officer(s). Even otherwise, Section 311 Cr.P.C. deals with power of the Court to summon material witnesses, or examine person present. That power is to be exercised by the Court in question. Though second part of the Section provides that 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. But here learned Sessions Judge, Sonapat, has categorically observed that it appears that parties have entered into a compromise and the complainant wants to resile from her earlier version.

It has further been observed that complainant had deposed in the Court under oath and never levelled any allegation against the police or that she has been pressurized by the police to depose against the accused. In that way the application was result of the afterthought to hood wink the Court. The complainant could not

possibly be allowed to take the court for a ride and demolish the case of the prosecution by stepping into the witness box again and depose in a manner totally opposite to what had been stated by her in her earlier statement. The Court is not to record such statements of witnesses simply as per their whims and fancies. Of course learned Sessions Judge did not find it essential to recall the complainant and record her statement again for the purpose of just decision of the case. He is shown to have exercised his discretion in a proper, appropriate and judicious manner without any element of arbitrariness. Furthermore, I do not find any illegality, infirmity or impropriety with the impugned order, much less the same being arbitrary or perverse resulting into miscarriage of justice.

In any case as has been observed by this court, by a Co-ordinate Bench, in case *Baba Kashmira Singh vs. Mahindra and Mahindra Financial Services Ltd., 2014 (15) RCR (Criminal) 150*, an order passed on an application under Section 311 Cr.P.C. is an interlocutory order and the revision petition is not maintainable against such an order.

There is absolutely no reason to interfere with the impugned order by exercising the revisional jurisdiction. The revision petition is found to be without any merit and the same is dismissed accordingly.

1.7.2021
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(H.S. Madaan)
Judge

Whether speaking / reasoned
Whether reportable

Yes/ No
Yes/ No