

CRM-M-37974-2021

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

**CRM-M-37974-2021
Date of Pronouncement: 29.10.2021**

Bhupesh Gogia

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Abhinav Gupta, Advocate,
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Ankur Ghai, Advocate,
for the accused.

HARNARESH SINGH GILL, J.

Challenge is to the order dated 24.08.2021 (Annexure P-1) passed by the learned Judicial Magistrate Ist Class, Ludhiana, in case bearing FIR No.66 dated 17.12.2011, under Sections 406, 420 and 120-B IPC, registered at Police Station Division No.8 (Kailash Chowk), District Ludhiana, whereby an application under Section 311 Cr.P.C. moved by the prosecution for summoning the concerned Clerk/Record Keeper from the office of the Sub Registrar, Ludhiana, has been dismissed.

The facts, in brief, necessary for the disposal of the present petition are that an agreement to sell had been executed between Bhupesh Gogia (complainant-petitioner) and Inderjit, grand-father of accused-Gagandeep, regarding plot Nos.117/118 situated at Mauza Peeru Banda, Ludhiana. The said agreement to sell was valid till the sale deed could be

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executed in favour of the petitioner by Inderjit. It was further mentioned in the application that Inderjit Singh expired on 20.05.2013, but during his lifetime, he had appointed his grand-sons namely Gagandeep, facing the trial, and Rohan, as General Power of Attorneys and both of them had the prior knowledge regarding the agreement qua plot Nos.117/118. On the basis of the attorney, Rohan Kumar had executed a registered sale deed in favour of one Jarnail Singh, vide Wasika No.12944 dated 21.10.2008. However, the above-said two plots were the subject matter of the agreement to sell dated 05.06.2008 and the same had to be sold to the petitioner-complainant only. Likewise, plot Nos.60/61 which were the subject matter of the agreement dated 20.05.2008, executed by Inderjit, in favour of the petitioner, were also sold by Inderjit through his attorney Rohan Kumar, vide Wasika No.13335 dated 30.10.2008. The formal proving of the above said sale deeds/documents, is necessary for the just and fair decision of the point in issue and, therefore, the record-keeper/concerned Clerk from the office of the Sub Registrar, Ludhiana, may be summoned.

Upon notice, reply to the application was filed with the averments that the application under Section 311 Cr.P.C. was filed with a mala-fide intention to delay the proceedings of the case and with an aim to fill the lacunae existing in the prosecution case. It was also averred that the alleged sale deed had been executed by Rohan Kumar, who is not arraigned as an accused in the present case.

Learned trial Court after hearing the respective submissions of the learned counsel for the parties, has dismissed the application filed

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under Section 311 Cr.P.C. vide impugned order dated 24.08.2021. Hence, the present petition.

Learned counsel for the petitioner would submit that the documents/sale deed sought to be proved by calling the concerned clerk/record-keeper, are relevant for the just and fair decision of the matter in dispute. However, the learned Magistrate has dismissed the application filed under Section 311 Cr.P.C. by observing that the same was moved without any justifiable cause and at a belated stage. He would further contend that the application under Section 311 Cr.P.C. can be allowed at any stage of inquiry/trial or other proceedings. The learned Magistrate has totally lost sight of the fact that signatures of the petitioner had been forged in the agreement to sell dated 10.06.2008 with regard to plot No.60, 61, 117 and 118 by Rohan, brother of the accused.

Learned counsel for the petitioner would further contend that the forgery committed by Rohan Kumar can only be proved by bringing on record copy of the agreement to sell dated 10.06.2008. He further contends that the forged agreement to sell dated 10.06.2008 is in possession of the brother of the accused and the same was part of the record in the civil suit for specific performance, but the same is not being produced in the present case deliberately. In support of his arguments, learned counsel for the petitioner relies upon the judgment rendered by the Andhra Pradesh High Court in A.S. No.116 of 1993, titled as '***Garlapati Venkateswarlu (died per L.R's) and others*** Vs. ***Divi Appalacharyulu***', Law Finder Doc. ID #550228.

On the other hand, learned counsel for the accused would

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contend that in the present case, Gangadeep Sharma and one Inderjit Singh were arraigned as accused and the latter has since expired. He would further contend that Rohan Kumar has never been sought to be arraigned as an additional accused by moving an application under Section 319 Cr.P.C. In this scenario, no useful purpose would be served by calling the concerned clerk to prove the execution of the alleged sale deed, and rather it would delay the proceedings. The learned counsel for the accused would further submit that after availing more than 50 opportunities, evidence of the prosecution was closed by the Court order and now by moving the application under Section 311 Cr.P.C., the prosecution has tried to fill-up the lacunae existing in the prosecution case. He would further contend that the impugned order has rightly been passed by the Court below. In support of his contentions, he relies upon the judgment rendered by a Single Bench of this Court in ***Parsa Singh Vs. Smt. Parkash Kaur and others*** 1976 AIR (Punjab and Haryana) 235.

I have heard the learned counsel for the parties.

Section 311 Cr.P.C. stipulates the power of the Court to summon material witness(es). The said Section would read as under:-

“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 object underlying Section 311 Cr.P.C. is that there may

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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 such evidence is essential for the just decision of the case. The significant expression that occurs is “at any stage of any inquiry or trial or other proceeding under this Code”. It is, however, to be borne in mind that the discretionary power conferred under Section 311 CrPC has to be exercised judiciously, as it is always said “wider the power, greater is the necessity of caution while exercising the judicious discretion.”

In the present case, the charges were framed on 20.11.2013 and after having availed more than 50 effective opportunities, the prosecution had failed to conclude its evidence and accordingly, its evidence had been closed by order twice. Initially, the prosecution evidence was closed on 25.04.2019 by court order. When the case was fixed for recording the statement of the accused under Section 313 Cr.P.C, the learned APP had moved an application under Section 311 Cr.P.C. to summon witnesses namely Maninder Bedi, Sanjiv Kumar, Rohit Pathak and Manoj Kumar. Vide order dated 28.05.2019, the trial Court had allowed the said application while granting three opportunities to the prosecution to lead its evidence. However, the prosecution failed to examine any witness after availing itself of all the effective opportunities, following which the trial Court had found no justification to further adjourn the case for the prosecution evidence and ultimately, had closed the evidence of the prosecution, vide order dated 16.08.2019. Secondly on 22.08.2019, learned APP for the State also moved an application under

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Section 311 Cr.P.C., for the summoning of the witnesses, but vide order dated 01.11.2019, the said application had met with the fate of dismissal. On 13.03.2020, when the arguments had commenced and even the defence counsel had advanced the arguments to a great extent, the application under Section 311 Cr.P.C. had been moved.

The conduct of the petitioner in moving one after the another application under Section 311 Cr.P.C., clearly speaks unwell on the part of the petitioner. As noticed above, the prosecution has availed more than 50 effective opportunities to lead and conclude its evidence. Thus, the petitioner cannot be given such a long rope. Moreover, the documents sought to be proved are not related to accused-respondent as the same are alleged to have been executed by one Rohan Kumar, who admittedly is not an accused in the present proceedings.

In view of the above, I do not find any merit in the present petition. The same is accordingly, dismissed.

29.10.2021
parveen kumar

(HARNARESH SINGH GILL)
JUDGE

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