

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-40058-2021(O&M)

Decided on 14.12.2021

Satbir Singh

.....Petitioner

versus

State of Haryana

.....Respondent

CORAM HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr.P.S.Ahluwalia, Advocate for the petitioner.

Mr. Bhupinder Singh, DAG, Haryana.

SANDEEP MOUDGIL, J

CRM-38679-2021

The present application has been filed in pursuance to the order dated 10.11.2021 whereby deposition of the complainant PW1-Satbir Singh son of Jeet Singh as Annexure P-9 is sought to be placed on record.

Application is allowed.

Annexure P-9 taken on record, subject to all just exceptions.

CRM-M-40058-2021

In the instant petition under Section 482 of the Code of Criminal Procedure (hereinafter called as 'Cr.P.C'), the petitioner has sought quashing of order dated 08.09.2021, passed by the trial Court below vide which the application under Section 311 Cr.P.C for recalling of PW1 Satbir Singh son of Jeet Singh for further examination with the prayer to play hard disk marked as "PHY-733-2017 HD DATA" in his evidence so as to enable him to identify electronic data of M/s Lark Engineering Company (India) and also an application for inspection of document Ex.P208/A by way of

playing the same on the laptop in the presence of the accused or their counsel was declined.

The learned counsel for the petitioner contended that the trial Court did not appreciate the facts that entire case set up by the prosecution hinges on electronic evidence and on theft of data and other intellectual property. The petitioner has further averred that the investigating agency has recovered incriminating material from the accused which was sent to CFSL, Chandigarh. The expert was examined as PW23 on 20.08.2021 in pursuance to the report from CFSL, Chandigarh dated 16.07.2019.

The case put forth by the petitioner is that the material stand retrieved from the accused persons could not have been played when the petitioner was examined which was with the CFSL authority at Chandigarh at that time. After the receipt of CFSL report, the petitioner's examination is required to identify the data which belongs to his company and also the stolen data by the accused persons.

The petitioner has vehemently argued that it has gone un-rebutted on record that both the reports as well as examination of the expert has taken place after the testimony of the complainant had been recorded and at that point in time when the testimony of the petitioner had been recorded, the aforesaid material was not available on the record of the learned trial Court. The petitioner completed his arguments stating that the petitioner had requested for recalling of PW1 so that the recovered and stolen data could be identified by playing it before the trial Court.

The trial Court below has dismissed the said application under Section 311 Cr.P.C filed by the complainant-petitioner holding it to be bereft of merit.

The trial Court below also dismissed the application for

inspection of documents Ex.P208/A by way of playing the same on the laptop in the presence of accused or their counsel in view of the fact that this very fact was within the knowledge of the complainant-petitioner very well at the time when the report of the FSL was filed and even prior thereto when the examination took place on 17.08.2019 which was concluded with the cross examination on 13.09.2018.

A perusal of order dated 10.11.2021 depicts that learned counsel for the petitioner admitted the deposition of complainant to have been concluded on 13.09.2018 and the report of FSL was filed on 16.07.2019 whereas the application under Section 311 Cr.P.C was moved on 23.03.2021 i.e after a long delay and at a belated stage. Prosecution evidence is almost complete. The deposition of complainant has been perused with the help of learned counsel for the petitioner.

A perusal of examination-in-chief of Satbir Singh complainant - PW1 as Annexure P-9 would clearly depict that he was aware with regard to search and seizure made by the Local Commissioners, so appointed by the Hon'ble Delhi High Court whereby stolen data was recovered from computer system.

It is the complainant alone who submitted three CDs and a hard disk before the police which was taken into police possession vide Ex.PE which bears his signatures. There is not even a whisper with regard to necessity of waiting for the FSL report or to examine the contents of hard disk. The complainant in cross examination further admitted that a copy of computer data in a hard disk and three CDs were deposited with Inspector Vijay on 03.03.2014 as demanded by the police. Three CDs and a hard disk handed over to the police contained copy of data of their company. The police did not take into possession the hard disk of computer from which the

data was copied.

After having heard the learned counsel for the petitioner and perusal of the record, it is evident that the complainant appeared as PW1 in this case on 03.08.2016 and his examination-in-chief was completed on the same day. He also moved an application for amendment of charge, which was amended vide order dated 17.11.2017 and thereafter he suffered a statement on 25.04.2018 that examination-in-chief recorded on 03.08.2016 be read as such after amendment of charge and thereafter his cross examination was conducted on 25.04.2018, 17.08.2018 and finally concluded on 13.09.2018.

During all that long period of more than two years, the petitioner did not move and now vide application dated 25.08.2021 and 26.07.2021 sought recalling of complainant-PW1 Satbir Singh and for inspection of document Ex.208/A by playing the same on the laptop. The sole reason for the complainant-petitioner to move the aforesaid application is, filing of report of the expert dated 16.07.2019.

However, the petitioner has failed to give any explanation for filing of such applications at a belated stage i.e more than after two years of filing of report of the expert except putting much reliance on Section 311 Cr.P.C which reads as under:-

Section 311 in the Cr.P.C., 1973

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.”

It is evident that the powers under Section 311 Cr.P.C are absolute as granted under Section 311 Cr.P.C but it is to be exercised judiciously in a manner which should not give unfair advantage to any one of the rival sides and allow one of the parties to take rebutting evidence at each and every stage by recalling the witness. The report of the expert has already been received and there is no embargo to refer to the same and to read during the course of final arguments.

In the light of the added fact that prosecution evidence is almost concluded and the complainant only wants to identify the material which was stolen by the accused from his laptop whereas the hard disk was very well in his custody, as discussed here-in-above referring to the cross examination of PW1-complainant himself that he handed over a copy of data in three CDs and the police did not take into possession the hard disk from the computer from which it was copied. The very fact that the material which was stolen by the accused from the laptop of the complainant was well within his knowledge and still he did not take any step at the appropriate stage for obvious reasons. Now it is only an attempt to derail the trial proceedings which are at an advance stage and also apparent that now a lacuna is sought to be filled up which cannot be allowed by any stretch of imagination. Moreover, the identification of data was part of investigation which is alleged to have been stolen by the accused.

The power under Section 311 Cr.P.C is widest discretionary power but the same should be exercised judiciously and not arbitrarily. The onus was upon the petitioner-complainant to satisfy that it was in every

respect essential to examine such and to recall him for further examination for furtherance of just decision of the case in hand. There has to be strong and valid reasons for invoking power under Section 311 Cr.P.C which should be exercised with care, caution and circumspection as has been held by the Hon'ble Apex Court in “**Raja Ram Parshad Yadav versus State of Bihar**”- **AIR 2013, SC-3081.**

In the light of above discussion, since both the applications are inter connected, were disposed of by the trial Court below vide common order dated 08.09.2021, I do not find any justifiable reason to interfere with the order dated 08.09.2021, passed by the trial Court below.

The petition is, therefore, dismissed.

(SANDEEP MOUDGIL)
JUDGE

14.12.2021

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Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*