

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 108

Criminal Revision No.1619 of 2021
Date of Decision: December 06, 2021

Parkash Chopra

..... PETITIONER(S)

VERSUS

State of Punjab & others

..... RESPONDENT(S)

...

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

...

PRESENT: - Mr. Arnav Kumar, Advocate, for the petitioner.

. . .

Sant Parkash, J

Crl. Misc. No.41514 of 2021

Application for dispensing with filing of certified/typed copies of Annexure P-1 to P-3 and impugned order dated 29.10.2021 is allowed as prayed for.

Crl. Revision No.1619 of 2021

Through the present revision petition, petitioner has challenged order dated 29.10.2021 passed by the Judicial Magistrate 1st Class, Ludhiana, whereby application moved by the petitioner under Section 311 Cr.P.C. to summon official witnesses has been dismissed.

The petitioner is complainant in FIR No.105 dated 25.12.2013 under Sections 379, 120-B IPC alongwith Section 21 of Mines & Minerals Act 1957, registered with Police Station, Haibowal, District

Ludhiana. During trial, petitioner moved an application under Section 311 Cr.P.C. for summons MHC, Police Station, Haibowal posted on 25.12.2013; present MHC of Police Station; SI Surinder Singh and Investigating Officer for re-examination. The petitioner alleged that one tractor make Sonalika D1-60RX (colour blue) alongwith trolley, loaded with sand, was recovered on 25.12.2013 and taken into possession vide recovery memo Ex.P3 and that the same had been changed by the police officials in connivance with the accused persons, after getting it released on supardari.

The application was contested and accused filed reply taking preliminary objections on the ground of maintainability and misusing the provisions of Section 311 Cr.P.C. as the fact regarding change of tractor was not raised either during investigation or during trial. The petitioner – complainant is law graduate and the present application has been filed only to delay the proceedings.

The trial court after hearing the arguments of learned counsel for the parties and scrutinizing the record, dismissed the application vide order dated 29.10.2021, which has been impugned by the petitioner in the present revision petition.

Learned counsel for the petitioner has vehemently contended that the trial court has not appreciated the statement of eye witness, PW-5, Lucky Chopra, thus, caused grave and material prejudice to the petitioner by dismissing the application. Vide Ex.P3 dated 25.12.2013, Tractor alongwith trolley, make D1-60RX was recovered. It was bearing number plate viz. PB-10-DZ (___6). The digits except No.6 were not visible. The chassis number was 24925ABMFX-L1-3031. The tractor was got released on supardari. Subsequently, the tractor was changed, as Ex.P6 & Ex.P7 dated 26.12.2013

depict the number of tractor being PB-54-D-2297 and chassis number as C22DB15838913. Thus, the accused persons in connivance with police officials have tampered with the evidence and committed offence of criminal breach of trust of the case property.

I have heard learned counsel for the petitioner and perused the record.

Admittedly, the present application is the 4th application under Section 311 Cr.P.C., out of the earlier three applications, two applications were allowed and one was dismissed. It is pertinent to mention here that these applications were moved at different stages of the trial for producing documents or summoning witnesses. Be that as it may, petitioner – complainant did not bother to mention all facts in one application. It is alleged by the petitioner that tractor has been changed in order to facilitate the accused, after getting it was released on superdari. The petitioner in the present case is none else but a law graduate and practicing lawyer. Still he did not mention this fact either in his evidence or in the earlier applications under Section 311 Cr.P.C. Petitioner – complainant himself stepped into witness box as PW-3 and his brother Lucky Chopra, alleged eye-witness, was examined as PW-5, who stated in his cross-examination that *“I did not note down the registration number of alleged JCB and Tipper. Voluntarily stated that both the alleged vehicles were without registration number”*. Even while moving 3rd application under Section 311 Cr.P.C., he sought permission to produce and prove photographs of the tractor but did not mention that it was changed by the prosecution. The new version now taken by the petitioner through the present 4th application under Section 311 Cr.P.C. neither finds any support from the evidence led by the prosecution

nor has it any reference in the testimonies of complainant or eye witness, PW-5, Lucky Chopra. Even for the sake of arguments, if contents of the application are taken as gospel truth, these facts were in the knowledge of the complainant at the initial stage also. Charge in the present case was framed on 19.08.2014, whereafter, prosecution has availed as many as 37 effective opportunities to conclude its evidence. The accused have been facing the agony of trial for more than 7 years. Now, after the conclusion of prosecution evidence, petitioner – complainant has moved 4th application which is nothing but an after-thought and will lead to a *de-novo* trial as the version regarding change of case property is totally different from the case which has been put forward by the prosecution so far. Filing of the application at a belated stage is nothing but only to thwart the proceedings and delaying the decision of the case. The trial court has gone through every aspect of the case and rightly dismissed the application.

In view of the above, there is no merit in the present revision petition and the same is dismissed.

(Sant Parkash)
Judge

December 06, 2021
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Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No