

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

ANIL KUMAR
2022-02-17 18:34
I attest to the accuracy and
integrity of this document

115

**CRM-M-6528 of 2022
Date of decision : 15.02.2022**

Avtar Singh

.....Petitioner

VERSUS

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Neeraj Malhotra, Advocate, for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

The present petition has been filed impugning the order dated 13.12.2019 passed by Judicial Magistrate (1st Class) on an application filed under Section 311 Cr.P.C., as well as the subsequent dismissal of the revision by the learned Additional Sessions Judge, Rupnagar, vide order dated 18.10.2021.

Learned counsel for the petitioner contends that the said application had been moved before the Illaqa Magistrate to tender into evidence, the original application and compromise dated 24.09.2016 entered into between the parties. It is submitted that the original of the application and compromise were in possession of the Station House Officer, however, the said original documents were not made a part of the final report under Section 173 Cr.P.C. Learned counsel contends that the said documents would be essential to ensure that ends of justice are adequately met and that non production of the said documents shall

cause grave prejudice to the petitioner. It was thus, contended that the police officials be directed to produce and tender the original application as well as the compromise dated 24.09.2016.

I have heard learned counsel for the petitioner and have gone through the impugned orders with his assistance.

Section 311 Cr.P.C. deals with the power of the Court to summon material witness and/or to examine any person present who may have not been summoned or to recall/re-examination any person already examined, if evidence of such person appears to be essential to the just decision of the case. The relevant statutory provision is extracted 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 aforesaid provision is an enabling provision to empower the Court to find out the truth and render a just decision. The object of the provision, as a whole, is to do justice not only from the point of view of the accused and the prosecution but also from the point of view of an orderly society. The Court examines the evidence, sought to be adduced, neither to help the prosecution nor to help the accused. It is done, neither to fill up any gap(s) in the prosecution evidence nor to give it any unfair advantage

against the accused. The fundamental thing to be kept in mind by the Court is as to whether the same is necessary in the facts and circumstances of the particular case before it. The said power is to be exercised only for strong and valid reasons and it should be exercised with caution and circumspection. Invariably, in the instant case evidence has already been led by the respective parties and even statement under Section 313 Cr.P.C. stood recorded prior to the submission of the application under Section 311 Cr.P.C. By means of the said application, the petitioner sought tender of the original application as well as compromise dated 24.09.2016. Ex-facie the said Section talks about examination of witnesses and does not empower tender of documents or to introduce new documents.

While dealing with the application, learned Judicial Magistrate had recorded as under:-

“ After going through rival contentions raised by both sides and documents placed on record, it follows that application moved by complainant is not a part of report under Section 173 Cr.P.C. PW-3 was cross examined before the Court but the complainant never mentioned about the said document dated 24.09.2016. Other witnesses i.e. PW-4 and PW-6 also did not refer regarding the document. Thereafter, prosecution closed their evidence and statement of accused under Section 313 Cr.P.C. was also recorded. Prosecution has moved this application when the case is fixed for arguments. The application was moved at a belated stage as the said fact was in the knowledge of prosecution at appropriate stage. No ground is made out to allow this application and the same being devoid of any merit stand dismissed.”

Invariably, the petitioner has failed to confront the police officials as well as other witnesses at this stage of their examination before the Court and no suggestion pertaining to the existence of compromise had been put to them. Besides, no such stand has been taken by the petitioner even at the time when statement under Section 313 Cr.P.C., was recorded. The instant application having been moved at a belated state seems to be an attempt to delay the proceedings that are now at the stage of culmination.

Having heard the learned counsel for the petitioner and having gone through the impugned orders under challenge, I am of the opinion that there is no illegality or infirmity in the orders passed by the Courts below. It has been specifically recorded by the learned Court that the witnesses of the prosecution were never confronted with the incident of the alleged compromise at the time when the said witnesses appeared before the Court. Thereafter, even the statement of the accused was recorded under Section 313 Cr.P.C., and not a whisper was made regarding the existence of any such document. The matter in question had already been fixed for final arguments when the application under Section 311 Cr.P.C., was moved for tendering the original application as well as the compromise dated 24.09.2016.

There can be no presumption as regard existence of a document in the facts of the instant case when the petitioner has not confronted the witnesses with the existence of any such document and is also not in possession of any primary document to supplement his

submission. Existence of such a document itself is a subject matter of dispute and no evidence has been led by the petitioner even in his defence to establish existence of such a document. The power under Section 311 Cr.P.C. cannot be used as a tool for filling up lacuna in the evidence and to improve upon a defence version, more so when the trial is at a fag end.

Learned counsel has not been able to point out any infirmity or illegality in the orders passed by the Courts below. Hence, finding no merit in the instant petition, the same is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

15.02.2022
anil

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>