

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

**Reserved on 14<sup>th</sup> of December, 2022  
Pronounced on 22<sup>nd</sup> December, 2022**

**CRM-M No.11242 of 2018**

Balbir Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present : Mr. Veneet Sharma, Advocate  
for the petitioner.

Mr. Jaiteshwar S. Bhandari, Asstt. Advocate General, Punjab  
for respondent No.1-State.

Mr. Kushagra Mahajan, Advocate  
for respondents No.2 to 6.

**PANKAJ JAIN, J.**

By way of present petition filed under Section 482 Cr.P.C., the petitioner has challenged order dated 3<sup>rd</sup> of November, 2017 whereby application filed by the prosecution for summoning the case file titled as 'Rai Sahib Mehta vs. Balbir Singh' decided by the court of Civil Judge Junior Division, Amritsar stands declined.

2. Petitioner is a complainant at whose behest case FIR No.523 dated 19<sup>th</sup> of November, 2008 was registered against the private respondents for the offences punishable under Sections 420, 467, 468, 471, 120-B IPC, at Police Station Civil Lines, Amritsar.

3. As per the allegations levelled in the FIR, it was claimed that

the complainant/petitioner and one Inderjit Singh son of Ranjit Singh Sandhu entered into an agreement w.r.t. sale of property bearing Plot No.153, on 7<sup>th</sup> of August, 2006. The petitioner received an amount of Rs.2,15,000/- as earnest money. 31<sup>st</sup> of October, 2006 was initially agreed to be the target date which was mutually extended thereafter to 31<sup>st</sup> of January, 2007 by an endorsement dated 18<sup>th</sup> of October, 2006 on the back side of the agreement to sell. It is further claimed that with the intervention of a Mediator, the properties were changed from Plot No.153 to 14 and from No.154 to plot No.21. It was also agreed that respondent No.2 shall not misuse the agreement to sell dated 7<sup>th</sup> of August, 2006 to claim rights over the properties bearing plot Nos.153 and 154. It is claimed that pursuant to such agreement sale deeds regarding plot numbers 14 and 21 were executed in favour of accused on 6<sup>th</sup> of February, 2007 and 15<sup>th</sup> of January, 2007 respectively. Despite the said compromise, the private respondents forged the signatures of the petitioner and one Inderjit Singh on the agreement to sell dated 7<sup>th</sup> of August, 2006 and an amount of Rs.7,00,000/- was shown to have been received as an earnest money. The target date was also interpolated to be 31<sup>st</sup> of July, 2007 instead of 31<sup>st</sup> of January, 2007. On the basis of forged agreement to sell, respondents filed suit for specific performance.

4. The said suit was withdrawn by respondent No.2 on 12<sup>th</sup> of September, 2007 and the original agreement to sell stands tendered on the records of the said civil suit. During trial the present application was

moved under Section 311 Cr.P.C. for summoning the case file titled as '**Rai Sahib Mehta vs. Balbir Singh**' from the Court of Civil Judge, Junior Division claiming that :-

“11. That earlier the same could not be done as the accused did not produce all the documents before I O alleging the document Mark C and Ex P-4 are forged and fabricated the prosecution could not procure the original of agreement to sell dated 07.08.2006 from the court for expert opinion. But since the above said documents are very material and to prove the factum of forgery and tempering with cheating, expert opinion is required to be obtained.”

5. The said application was contested by the accused claiming that the present application has been moved after the statement of the accused already stands recorded under Section 313 Cr.P.C. and the entire defence evidence stands concluded by the accused. It has been further claimed that on the application made by prosecution seeking amendment of charge a statement was suffered by the prosecution on 22<sup>nd</sup> of August, 2017 to the effect that they do not want to lead any evidence after amendment of charge and it was on such statement that the charge was amended. Reference was further made to statement made by complaint Balbir Singh, dated 22<sup>nd</sup> of August, 2017 to the similar effect as well.

6. The Trial Court dismissed the application filed by the prosecution holding that after the Court has already closed the evidence of the prosecution by order, the present application is not maintainable and allowing the application at this stage would amount to *de novo* trial. Trial Court further observed that the civil suit pertains to the year 2006 and was

withdrawn in the year 2017. Thus, the prosecution ought to have called the file at relevant point of time and not after evidence of the prosecution already stands closed.

7. Ld. Counsel for the petitioner submits that the Trial Court misdirected itself while declining the prayer made by the prosecution. It is settled law that the rules of procedure are not made to advance the justice and the same cannot be read to thwart the course of justice. He submits that in the absence of original agreement, the copy of the agreement on record cannot be admitted in evidence and, thus, the prosecution suffers the risk of whole of the trial being reduced to a futile exercise.

8. Per contra, counsel for the respondents No.2 to 6 has submitted that earlier also similar application was moved at the behest of the complainant in the year 2015 for summoning of the file. The same was ordered to be summoned for 3<sup>rd</sup> of November, 2015. Now again an application has been moved for summoning of the same document. He thus submits that successive application under Section 311 Cr.P.C. cannot be allowed and rather it is duty of the Court to discourage such successive application(s) as power under the provision has to be exercised with great caution and circumspection.

9. Reliance has been placed upon law laid down by the Apex Court in **Swapan Kumar Chatterjee vs. Central Bureau of Investigation, (2019) 14 SCC 328**, wherein it has been held that :

“12. It is well settled that the power conferred under Section 311 should be invoked by the court only to meet the ends of justice. The power is to be exercised only for strong and valid reasons and it should be exercised with great caution and circumspection. The court has vide power under this Section to even recall witnesses for reexamination or further examination, necessary in the interest of justice, but the same has to be exercised after taking into consideration the facts and circumstances of each case. The power under this provision shall not be exercised if the court is of the view that the application has been filed as an abuse of the process of law.

13. Where the prosecution evidence has been closed long back and the reasons for non-examination of the witness earlier is not satisfactory, the summoning of the witness at belated stage would cause great prejudice to the accused and should not be allowed. Similarly, the court should not encourage the filing of successive applications for recall of a witness under this provision.”

10. Having heard counsel for the parties and after going through the records of the case this Court is of the considered opinion that admittedly the matter relates to allegations *qua* forgery of an agreement to sell. The said agreement to sell is subject matter of suit for specific performance filed at the behest of respondent. Thus, the question would be *“whether the summoning of original document from the case file in a civil suit is necessary for the adjudication of the present case or not?”*

11. The Trial Court without examining the case of the petitioner on the touchstone of the test of necessity for adjudication misdirected itself in declining the prayer made by the petitioner on technicalities. In case the

agreement to sell is summoned from the Civil Court no prejudice will be caused to the respondents more so when the present revision petition is pending adjudication before this Court for the last more than 4 years. Even in case of **Swapan Kumar Chatterjee's case** (supra) relied upon by counsel representing respondents No.3 to 6, Apex Court held as under :-

“11. The first part of this Section which is permissive gives purely discretionary authority to the criminal court and enables it at any stage of inquiry, trial or other proceedings under the Code to act in one of the three ways, namely, (i) to summon any person as a witness; or (ii) to examine any person in attendance, though not summoned as a witness; or (iii) to recall and re-examine any person already examined. The second part, which is mandatory, imposes an obligation on the court (i) to summon and examine or (ii) to recall and re-examine any such person if his evidence appears to be essential to the just decision of the case.”

12. As a sequel of the discussion held hereinabove, the present petition is allowed. Consequently, order dated 3<sup>rd</sup> of November, 2017 passed by the Court of Civil Judge, Junior Division, Amritsar, is hereby set aside. Application filed by the prosecution for summoning the case file titled as 'Rai Sahib Mehta vs. Balbir Singh' is allowed. Trial Court shall grant one opportunity to the petitioner to lead evidence *qua* the same.

**December 22, 2022**  
Dpr

**(PANKAJ JAIN)**  
**JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No