

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-453-2018 (O&M)

Date of Decision: 16.09.2022

Avinash Kaur and another

....Petitioner(s)

Versus

Avtar Singh and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Kanwaljit Singh, Senior Advocate assisted by
Ms. Shazia K. Singh, Advocate, for the petitioners.

Mr. Karaminder Singh, Advocate, for respondent No.1.

Mr. Anil Kumar Lamdharia, Addl. PP, UT, Chandigarh,
for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

The present revision petition has been filed impugning the order dated 20.12.2017 passed by the learned Chief Judicial Magistrate, Chandigarh by which an application which was moved under Section 311 Cr.P.C by the petitioners/accused for permission to recall CW-6 Sumeet Kumar, Forensic Expert was dismissed.

Learned Senior Counsel for the petitioners has submitted that it is a case where on a private complaint by respondent No.1 against the petitioners, the matter was at the pre-charge stage and the allegations in the complaint were that respondent No.1 who is the complainant alleged that the petitioners have used an affidavit in a proceedings before the police

which is purported to have been executed by respondent No.1 but in fact it was a false and fabricated affidavit since it was never executed by respondent No.1 and on these allegations, the complaint was filed before the Magistrate. During the preliminary evidence stage a forensic expert was called as CW-6 who was also cross examined by the counsel but since the intricacies of the forensic science were not known to the counsel and therefore, there was a need to recall the witness who was a forensic science expert for further cross examination by taking assistance of another forensic expert. The learned Senior Counsel further submitted that it was immediately thereafter when the application was moved which was dismissed and thereafter, he had filed the present revision petition whereby an interim order was passed by this Court on 06.02.2018 whereby the trial Court was directed to defer the proceedings and thereafter, no further proceedings were held before the learned trial Court and now the matter is pending since the year 2018 which is almost 4 years. He further submitted that it is not a case where after some delay that the application has been moved but it was moved promptly and no prejudice could have been caused to respondent No.1 in this regard. He further submitted that in the light of the provisions of Section 311 Cr.P.C when the need for recalling of a witness goes to the root of the controversy, then it is always in the interest of justice to recall the witness so as to ascertain the truth and which is the spirit of Section 311 Cr.P.C and therefore, the dismissal of the application by the learned Magistrate was erroneous. He further submitted that only one opportunity may be granted so that the witness may be cross examined with the assistance of forensic expert.

On the other hand, Mr. Karaminder Singh, learned counsel

appearing on behalf of respondent No.1 submitted that once an opportunity was granted to the learned counsel for cross examination of forensic expert, then no occasion could have arisen for filing an application for recalling of the witness. He further submitted that only reason for filing of the application under Section 311 Cr.P.C was for delaying the proceedings.

Mr. Anil Kumar Lamdharia, learned Additional Public Prosecutor, Union Territory, Chandigarh has appeared on behalf of respondent No.2.

I have heard the learned counsel for the parties.

The short point involved in the present case is that on the application which was filed by the petitioners under Section 311 Cr.P.C for recalling of forensic expert was dismissed by the learned Chief Judicial Magistrate, Chandigarh and immediately thereafter the present revision petition was filed wherein the proceedings were deferred and now even it is four years that the trial has not even commenced only because of the impugned order. The allegations in the present case were pertaining to authenticity of an affidavit which according to respondent No.1 was not executed by him and it was a fabricated document and the entire case depends upon the evidence of the forensic expert since the handwriting has been compared. The application under Section 311 Cr.P.C was moved immediately after the forensic expert was examined by the counsel for the defence on the ground that there is a need for recalling of the witness so that he can be cross examined by taking the assistance of another forensic expert. This Court is of the view that considering the subject matter of the allegations and the controversy, examination of the forensic expert goes to the root of the controversy and in order to ascertain the truth, proper and

adequate opportunity needs to be granted to the petitioners/accused persons in this regard and considering the stage of the case no prejudice would be caused to any of the parties in this regard. Therefore, it will be in the interest of justice to grant one more opportunity to the petitioners for cross examining the forensic expert CW-6 Sumeet Kumar.

Consequently, the present revision petition is allowed subject to payment of Rs. 5,000/- as costs which have to be paid by the petitioners to respondent No.1 before the date fixed by the trial Court. The order dated 20.12.2017 passed by the learned Chief Judicial Magistrate, Chandigarh is set aside. Learned Chief Judicial Magistrate, Chandigarh shall fix a date for recalling of the witness CW-6 namely Sumeet Kumar, Forensic Expert and the petitioner shall have only one opportunity to cross examine him in accordance with law.

16.09.2022

rakesh

**(JASGURPREET SINGH PURI)
JUDGE**

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No