

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Sr. No.231

CRM-M-37057-2021 (O&M)

Date of decision : 07.03.2022

Kawalbir Singh

.....Petitioner

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Manish Prabhakar, for the Advocate for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab.

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**SANT PARKASH, J. (ORAL)**

The present petition under Section 482 Cr.P.C. has been filed for setting aside the order dated 21.01.2020 (P-1), whereby learned Judicial Magistrate 1<sup>st</sup> Class, Amritsar has declined the application filed by the petitioner under Section 311 Cr.P.C. to summon the Director, Forensic Science Laboratory to appear and verify the signatures of the petitioner/complainant in the alleged forged documents i.e. Agreement to sell dated 26.12.2013.

The brief facts of the case are that the petitioner lodged an FIR No.84 dated 11.3.2015 under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Civil Lines, Amritsar against Manoj Kumar, Hardev Singh and Piara Singh on the allegations that the above-said persons had prepared an agreement to sell dated 26.12.2013 in respect of his plot by forging his

signatures. Respondent No.2-Manoj Kumar also filed a civil suit for possession over the plot in question by way of specific performance of the alleged agreement to sell.

Learned counsel for the petitioner submits that the petitioner is facing harassment as on one hand he has to defend his case to save his plot in question in the civil proceedings and on the other hand he is pursuing criminal proceedings to get the justice. He further submits in both these cases only the signatures of petitioner on alleged agreement to sell dated 26.12.2013 are to be proved. He, thus, submitted that it is necessary for the just decision of the case to examine the original document, i.e. Sale-deed/Transfer-deed by the Director, Forensic Science Laboratory for giving his opinion/report with the disputed signatures. However, the learned trial Court illegally dismissed the application filed under Section 311 Cr.P.C. by the petitioner.

On the other hand, learned counsel for respondents-State submits that by way of examining the said witness at this stage, the petitioner wants to create new evidence and to delay the proceedings, which is not permissible in law. Therefore, he prays for the dismissal of the present petition.

I have heard the learned counsel for the parties and with their able assistance gone through the case file.

On a bare perusal of the case file, it would be revealed that the application filed under Section 311 Cr.P.C. by the petitioner has been dismissed by the learned trial Court on the ground that the court cannot use its jurisdiction under Section 311 Cr.P.C. for preparation of a report

regarding the authenticity of the signatures as the same is prerogative of the investigating agency.

Before proceeding further, it is apt to reproduce Section 311 Cr.P.C. which is as under:-

*“Power to summon material witness, or to 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.”*

From the aforesaid provisions of law, it becomes crystal clear that the power of the Court under Section 311 Cr.P.C. is extraordinary and has to be exercised for imparting justice. The observation of the learned trial court that the court cannot use its jurisdiction under Section 311 Cr.P.C. for preparation of the report regarding the authenticity of the signatures are totally inconsistent with the said provisions of law. The petitioner has been disputing his signatures on the alleged agreement to sell dated 26.12.2003 about which the civil as well criminal proceedings are going on. Though, it was the prerogative of the investigating agency to get the specimen signatures compared with the signatures on the agreement to sell but this lapse on the part of the investigating agency would not make the court toothless to examine any witness for judging the authenticity of a document which goes to the root of the case. The object underlying 311 Cr.P.C. is that there may not be failure of justice on account of any evidence, which appears to the court essential for just decision of the case.

In the considered opinion of this Court, the comparison of the disputed signatures with the specimen signatures would clinch the entire issue and rather it will facilitate the court in arriving at a just decision of the case.

In view of the above, the present petition stands allowed. The impugned order dated 21.01.2020 (P-1) is set aside.

07.03.2022  
mks

[SANT PARKASH]  
JUDGE

|                           |   |          |
|---------------------------|---|----------|
| Whether speaking/reasoned | : | Yes / No |
| Whether reportable        | : | Yes / No |