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

CRM-M-41859-2022 (O&M)

Date of decision : 13.09.2022

Gurpreet Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of order dated 07.07.2022 passed by the Judicial Magistrate, Ist Class, Ludhiana in Criminal Case No.CHI/2451 dated 26.11.2015 titled as “State Vs. Ranjit Singh and another” in FIR No.93 dated 23.06.2015 registered under Sections 447, 427, 379, 506, 511 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) at Police Station Jamalpur, District Ludhiana, vide which, an application filed under Section 311 of Cr.P.C. by the prosecution for summoning the Readers of DCP and ACP, Ludhiana, has been allowed.

Learned counsel for the petitioner has submitted that in the present case, FIR under Sections 447, 427, 379, 506, 511 of the IPC was registered on 23.06.2015 and the report under Section 173 of Cr.P.C. was

prepared on 12.11.2015 and the charges were framed on 17.12.2015. It is further submitted that SI Manjit Singh, who is the Investigating Officer of the case, has been examined in the present case as PW2 and counsel for the accused had put questions to the said PW2 with respect to the enquiry which had been conducted in the present case and in the cross-examination, he had stated that he had seen the list of witnesses and there was no witness which had been mentioned regarding the said enquiry. It is contended that after the cross-examination of the said witness was over, an application dated 07.02.2019 was filed under Section 311 of Cr.P.C. for summoning the concerned Reader of DCP and concerned Reader of ACP, alongwith the record of the enquiry dated 04.03.2015. It is further contended that the reply had been filed but by virtue of the impugned order, the said application under Section 311 of Cr.P.C. has been allowed. It is argued that the said enquiry report is already a part of the report u/s 173 Cr.P.C. as is apparent at page 37 of the paper book and the summoning of the Readers of DCP and ACP is only an attempt to delay the matter. It is further argued that same has also been done to fill up the lacuna inasmuch as, during the pendency of the said application, the complainant-PW3-Bimal Kumar was also examined and in his examination-in-chief, he had not stated anything regarding the enquiry. It is also submitted that in case, the impugned order is upheld, then the prosecution would move another application for re-examination of the Investigating Officer as well as the complainant and thus, the impugned order deserves to be set aside.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

It is not in dispute that the case is at the stage of prosecution

evidence. The application under Section 311 Cr.P.C. was filed on 07.02.2019, immediately after the evidence of PW2-Investigating Officer. In the said application, it was specifically mentioned that the concerned Readers of DCP and ACP are necessary witnesses so as to prove the enquiry report. The Judicial Magistrate Ist Class, Ludhiana, after considering the averments made in the application as well as the reply filed, had observed that the FIR has been registered after due enquiry and that the said enquiry was the very basis of the FIR, in pursuance of which, the criminal trial was being conducted and it was found that in the said circumstances, the said Readers of DCP and ACP were the necessary witnesses to duly prove the said enquiry report and to arrive at a fair decision. It was further observed that no prejudice would be caused to the petitioner since, the petitioner would be afforded an opportunity to cross-examine the said witnesses. It is the case of the petitioner himself that the enquiry report is a part of the report under Section 173 of Cr.P.C. as is apparent from the report under Section 173 of Cr.P.C. (at page 37 of paper book) and thus, it cannot be said that the petitioner has been taken by surprise by the prosecution, who are wanting to examine the two witnesses in question in order to prove the said enquiry report. It has been rightly observed by the Judicial Magistrate Ist Class in the impugned order that the said two witnesses are necessary witnesses to prove the enquiry report and to arrive at a fair decision and the said order does not call for any interference. Section 311 of Cr.P.C. empowers the Court, at any stage of inquiry, trial or any proceedings, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined, more so, when his

evidence appears to be essential for the just decision of the case. The said power has been rightly exercised by the Judicial Magistrate Ist Class, Ludhiana. The case is at the stage of prosecution evidence and no prejudice would be caused to the petitioner who shall also be given an opportunity to cross-examine the said two witnesses. The fact that the complainant and one more witness have been examined during the pendency of the application filed under Section 311 of Cr.P.C., as stated by the learned counsel for the petitioner would also show that the trial is not being delayed and is proceeding at a good pace.

Keeping in view the abovesaid facts and circumstances, this Court finds no error, illegality or perversity in the order dated 07.07.2022 passed by the Judicial Magistrate Ist Class, Ludhiana.

Accordingly, the present petition is dismissed.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

13.09.2022

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**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**