

116 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2704-2023

DATE OF DECISION:-19.01.2023

Mandeep Singh Bal

...Petitioner.

vs.

State of Punjab and another

...Respondents..

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rahul Bhargava, Advocate,
for the petitioner.

HARKESH MANUJA, J. (Oral)

By way of present petition filed under Section 482 Cr.P.C., challenge has been made to an order dated 09.12.2022 (Annexure P-5) passed by the Court of learned Chief Judicial Magistrate, Amritsar, whereby, an application filed at the instance of the petitioner, invoking Section 311 Cr.P.C., has been dismissed.

The facts of the case are that respondent No.2 herein is facing the trial in pursuance to registration of FIR No.39, dated 10.02.2016, under Sections 452, 323, 427 and 34 IPC, got registered at the instance of present petitioner. The investigation in the present case concluded way-back in the year 2017 and since then, respondent No.2 is facing trial.

During trial, on 16.11.2022, while it was pending for recording of defence evidence, the petitioner moved an application under Section 311 Cr.P.C. for summoning of witnesses, namely, Seema Bhatia, Satbir Singh and Sukhraj Singh, stating them to be present at the time of occurrence and having seen the private respondent No.2, besides, others two. The prayer

made in the aforesaid application was opposed, at the instance of respondent No.2, besides the other two named as accused in the FIR, by filing their objections. The trial Court vide order dated 09.12.2022, rejected the prayer made by the petitioner and dismissed the application.

Assailing the aforesaid order dated 09.12.2022, learned counsel for the petitioner submits that the presence of the three witnesses, sought to be summoned by way of application filed at his instance, is very much necessary for effective adjudication of the case in hand, as those were the persons having seen the alleged accused running from the place of occurrence on the day of incidence. He also refers to decision dated 20.12.2021 passed by this Court in CRM-M-19624-2021, titled as “Rajinder Kumar vs. State of Punjab and another”, so as to contend that even if the persons have not been mentioned as witnesses in the challan and their statements under Section 161 Cr.P.C. had not been recorded, they can be sought to be summoned under Section 311 Cr.P.C.

On the other hand, Mr. B.S. Jaiswal, Advocate has put in appearance on behalf of respondent No.2 though no, notice has been issued and strongly opposes the prayer made in the present petitioner, stating that the present application is merely a tactic to delay the agony of respondent No.2, who is an old man of 73 years of age and has been facing the trial for the last more than 6 years. He also submits that the petitioner has not been pursuing his case in a diligent manner as on previous occasion also, a similar application under Section 311 Cr.P.C. was moved at his instance on 03.09.2022, seeking summoning of Investigating Officer as the prosecution witness and at that time, he never prayed for summoning of the aforesaid three persons as witnesses.

Learned counsel for respondent No.2 has brought to the notice of this Court an order dated 26.05.2022 passed by this Court in CRM-M-13115-2022, in case "Gurnek Singh vs. State of Punjab", wherein, on due consideration of the present case, this Court passed a specific direction for conclusion/recording of the prosecution evidence within a period of 04 months. Learned counsel also points out that by now, even the defence evidence has already been concluded and the trial is now at the stage of final arguments.

I have heard, learned counsel for the parties and have gone through the paper-book as well as the documents referred at the time of hearing by both the sides.

The present is a case arising out of FIR, which was got registered on 10.02.2016, at the instance of petitioner being the complainant. From a perusal of entire FIR, presence or even the names of the witnesses now sought to be summoned were nowhere mentioned therein. Even, the persons now sought to be summoned never ever appeared before the Investigating Agency for the purpose of recording their statements, so as to support the version of the complainant i.e. the petitioner. Though, no doubt, the procedure can never be used to curtail the substantive rights of the parties by adopting hypertechnical approach, however, the parties, who are unable to pursue their remedies with due diligence at the appropriate stage in repeated and continuous manner, cannot call upon the Court to exercise discretion in their favour.

In the present case, the petitioner earlier filed a similar application under Section 311 Cr.P.C. on 13.09.2022, for the purpose of summoning of the Investigation Officer as a witness and before that while making his

deposition in the Court on 29.08.2022, he did not even mention the names of three persons, now sought to be summoned, in his cross-examination. He was in fact required to be more vigilant and diligent while making his application, however, it was only after a period of almost two months from dismissal of his first application by the trial court on 23.09.2022, second application i.e. the present one again under Section 311 Cr.P.C. was filed before the trial court on 16.11.2022, which, in the facts of this case appears to be an exercise to delay the disposal of the trial so that the old man i.e. respondent No.2 may continue to face its agony for some more time.

Keeping in view the aforesaid discussion, I do not find any merit in the present petition, the same is thus dismissed.

19.01.2023

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(HARKESH MANUJA)
JUDGE

whether speaking/reasoned: Yes/No
whether reportable: Yes/No