

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

201

CRM-M-4178-2020 (O&M)

Date of decision: 19.05.2023

Daya Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gurpreet Singh, Advocate for
Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

Mr. Diwan S. Adlakha, Advocate
for respondents No.2 and 3.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner is challenging the order dated 20.01.2020 passed by learned Additional Sessions Judge, Yamuna Nagar (Annexure P-7) vide which his revision petition to challenge the dismissal of his application, vide order dated 18.05.2019 (Annexure P-5) passed by learned Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri, under Section 311 of the Cr.P.C. to summon Gainda Ram son of Rulia Ram as witness in case FIR No.633 dated 08.10.2014 under Sections 406, 420 and 120-B of the IPC registered at Police Station City, Yamuna Nagar, was dismissed. A further prayer has also been made to allow the petitioner to tender a Compact Disc (CD) containing audio recording of the admission of the accused regarding his liability to pay ₹5,50,000/- to the petitioner.

2. Learned counsel for the petitioner submits that the Court below had erred in dismissing the application filed by the petitioner under Section 311 of the Cr.P.C. merely because it had been filed at a belated stage. He has asserted that Section 311 of the Cr.P.C. clearly provides that the Court is bound to examine any person if his evidence appears to be essential for the just decision of a case. Learned counsel has further submitted that this provision is mandatory in nature and hence the Court below while passing the impugned order failed to correctly interpret the provisions of Section 311 of the Cr.P.C. It has been further contended that the evidence of Gaimda Ram, who is being sought to be summoned under Section 311 of the Cr.P.C. is essential for the just decision of the case as Gaimda Ram was present when the Panchayat, in respect of the dispute in question, was convened and thus, could testify to the fact that respondents No.2 and 3-accused had admitted to their liability to pay ₹5,50,000/- to the petitioner.

3. Learned counsel for the petitioner has further submitted that the petitioner is also seeking to tender one audio recording (Annexure P-8) before the Trial Court wherein it stands recorded that the accused had admitted to their said liability therein also. Learned counsel has contended that though the audio recording was given to the investigating officer at the first instance i.e. at the time of lodging of the FIR in question, however, the investigating officer had held it back and not made it a part of the challan on account of the pressure exerted on it by the accused, who are influential persons. Learned counsel has, thus, asserted that the CD in question qua admission of liability by the accused would go a long way to bring forth the guilt of the accused

respondents No.2 and 3.

4. Per contra, while opposing the prayer and submissions made by the learned counsel for the petitioner, learned counsel appearing for respondents No.2 and 3-accused has submitted that the FIR in question was registered way back in the year 2014 and it was thus, evident that respondents No.2 and 3 had been suffering the agony of a protracted trial ever since then. Learned counsel has further submitted that the application by the petitioner had been moved at a highly belated stage, i.e., after all the prosecution witnesses had been examined. It has also been submitted that even prior to the filing of the application in question, under Section 311 of the Cr.P.C., the petitioner had also earlier filed an application under Section 311 of the Cr.P.C. for summoning one Om Pal who too was stated to be present at the time when the Panchayat in question was convened. The said application was allowed by the Trial Court, however, the said witness Om Pal was not examined and instead given up by the prosecution. Learned counsel has submitted that the petitioner was given ample opportunities and there was nothing which prevented him from seeking the summoning of Gainda Ram, when the previous application under Section 311 of the Cr.P.C. was filed for summoning Om Pal.

5. Learned counsel has further submitted that assuming for the sake of arguments, though not conceded, that the audio recording had not been made a part of the challan by the police, there was yet again nothing which prevented the petitioner from making a prayer for tendering the CD, containing audio recording, prior in time or at the time when the first application under Section 311 of the Cr.P.C. was

filed for summoning Om Pal. Therefore, it left no manner of doubt that the application under Section 311 of the Cr.P.C. was nothing but a dilatory tactic to prolong the trial and was just a tool to cause unnecessary agony and harassment to the accused who as already submitted has been facing a protracted trial since the year 2014.

6. I have heard learned counsel for the parties and perused the relevant material on record.

7. It is not disputed that the petitioner had earlier also moved an application under Section 311 of the Cr.P.C. for summoning one Om Pal and the Trial Court had allowed that application. It is also a matter of record that Om Pal was not examined after being summoned and was given up by the prosecution. The petitioner is now seeking to examine Gainda Ram and also wanting to tender some audio recording in evidence. It is evident that the petitioner himself has failed to exercise due diligence and has chosen to wake up from his slumber at a highly belated stage when the prosecution evidence has concluded. The audio recording which is being sought to be tendered in evidence was not only in the knowledge of the petitioner but also in his possession. In case the investigating agency had withheld the same and not made it a part of the challan, this Court finds it difficult to comprehend as to why the petitioner chose to keep mum throughout the trial and now when the trial was nearing conclusion, has sought to tender the said audio recording. Admittedly, no such prayer was made by the petitioner when the previous application under Section 311 of the Cr.P.C. was moved for summoning Om Pal as a witness.

8. Furthermore, strangely the petitioner did not even by way

of any whisper mention at any stage prior to the moving of his second application under Section 311 of the Cr.P.C. qua the presence of Gaimda Ram or his participation when the Panchayat in question was convened or qua the audio recording which had been allegedly withheld by the police while filing the challan. Admittedly, the FIR in question was registered more than 09 years back in the year 2014. The accused too has a right to speedy trial; he cannot have the sword hanging over his head if the complainant fails to exercise due diligence.

9. In the facts and circumstances, the instant petition being devoid of any merit is dismissed.

19.05.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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