

CRM-19991-2023 in/and
CRM-M-6203-2020 (O&M)

2023:PHHC:083056

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-19991-2023 in/and
CRM-M-6203-2020 (O&M)
Reserved on 18.5.2023
Date of Decision: 4.7.2023

Ravinder Walia

....Petitioner

VERSUS

State of Haryana and others

....Respondent(s)

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Onkar Singh, Advocate
for the petitioner.

Mr. Vishal Kashyap, DAG, Haryana.

Mr. Sanjiv Kumar Aggarwal, Advocate with
Mr. Tejas Bansal, Advocate,
for respondents No.2 to 4.

KARAMJIT SINGH, J.

Petitioner-Ravinder Walia has filed the present petition under Section 482 of Cr.P.C. for quashing of order dated 8.1.2020 (Annexure P-15) passed by the Court of learned Judicial Magistrate, Panipat whereby an application filed by the petitioner under Section 311 Cr.P.C. for calling/recalling of the concerned witnesses was rejected in a criminal case having FIR No.743 dated 15.6.2023 registered under Sections 420, 467, 471, 120-B IPC at Police Station Panipat.

2. Brief facts of the case in nutshell are that the aforesaid FIR was registered against respondents No.2, 3 and 4 on the basis of the complaint lodged by Ujagar Singh (since deceased) wherein he alleged that plot No.486, Sector 24, Panipat was allotted to his son Sethi Singh by Haryana

Urban Development Authority (in short, “HUDA”) and later on, in August, 2010, Sethi Singh entered into an agreement to sell the said plot and the said agreement was valid up to 22.10.2020 and in the meantime, Sethi Singh died on 20.9.2010. After the death of Sethi Singh, the accused persons showed sympathy to the complainant and offered help to Ujagar Singh to get transferred the said plot in his name he being the only legal heir of his son Sethi singh who was bachelor; that on the pretext of providing the help, the accused persons took the complainant to the office of Estate Officer on 20.1.2011 and took signatures of the complainant on certain documents with understanding that the same were required for transfer of plot in question in the name of the complainant; that later on, complainant-Ujagar Singh came to know that the accused persons misused the said signed documents and got transferred the plot in question in the name of respondent No.3-Sarika Gupta who is daughter of respondent No.2-K.K.Gupta and both of them colluded with respondent No.4-Pawan Narang; that in this manner, the accused persons committed fraud and cheating against complainant-Ujagar Singh in order to grab his property. Consequently, FIR was registered in the present case.

3. After completion of investigation, the police presented the challan and the trial Court framed charges and then the prosecution led its evidence and in the meantime, complainant-Ujagar Singh died. Petitioner-Ravinder Walia is claiming himself to be a testamentary legal heir of Ujagar Singh on the basis of Will dated 7.10.2014. The petitioner was also cited as a prosecution witness in the challan presented by the police against the accused persons under Section 173 of Cr.P.C.

4. During the pendency of the trial, petitioner-Ravinder Walia claiming himself to be legal heir of complainant-Ujaggar Singh, filed an application under Section 311 of Cr.P.C. to adduce the following additional evidence : -

(i) Policy of transfer of ownership of residential plot/house in case of death of an allottee dated 1.2.2011 framed by HUDA.

(ii) Instructions issued by Chief Administrator, HUDA vide memo No.UB-A-3-2011/29566-89 dated 7.9.2011 and UB-A-3-2011/30963-85 dated 20.9.2011 to all the Estate Officers with regard to transfer of ownership of residential plot in case of death of allottee.

(iii) To recall PW3 official of the office of Sub Registrar-cum-Tehsildar, Panipat to produce original register maintained in the said office with regard to attestation of affidavit by Executive Magistrate, Panipat pertaining to 26.7.2011 and 10.6.2011 in order to establish that fictitious serial numbers were given to the alleged attestation of affidavit of Ujaggar Singh purported to be executed on 26.7.2011 and 10.6.2011.

(iv) To recall PW8-Vikas Sodhi, Stamp Vendor in order to prove that as per entry at serial No.3918 dated 8.6.2011, the alleged stamp paper worth ₹ 10/- was sold in the name of Ujain Singh and not in the name of Ujaggar Singh.

(v) To place on record certified copy of document Ex.D18, as has been marked in the testimony of respondent No.2-K.K.Gupta who appeared as a witness in the civil suit titled as Ujaggar Singh v. Sarika Gupta and another.

(vi) Memo No.A-3/2011/7951 dated 7.6.2011 signed by Prem Chand, Estate Officer, HUDA who had already relinquished his charge on 5.6.2011.

(vii) To place on record entry dated 7.6.2011 of

dispatch register maintained in the office of Estate Officer, HUDA, Panipat.

(viii) Certified copies of sale deeds having Wasika No.5584 and 5606 which were registered by the petitioner while exercising powers of Sub Registrar, Fazilka on 20.1.2011 in order to prove that the petitioner was not present in the area of Panipat on 20.1.2011.

The application was contested by the accused persons who filed their reply.

5. After hearing both the parties, learned trial Court dismissed the aforesaid application filed by the petitioner under Section 311 of Cr.P.C. vide order dated 8.1.2020. Being aggrieved, the petitioner has filed the present petition.

6. Counsel for the petitioner has submitted that the petitioner being legal heir of the complainant is duly authorised to file an application under Section 311 of Cr.P.C.. It has been further contended that the documents which the petitioner intends to place on record are necessary for just decision of the case. He has further submitted that the Higher Courts have time and again reiterated that the trial Court has got vast powers under Section 311 of Cr.P.C. in order to unfold the truth and the said power could be exercised at any stage of the trial if the concerned evidence appears to be an essential for just decision of the case. In support of his arguments, counsel for the petitioner has placed reliance upon the recent judgment passed by Hon'ble Supreme Court in **Varsha Garg v. State of M.P. And others**, 2022 SCC Online (SC) 986 and the decision given by Coordinate Bench of this Court dated 29.3.2023 passed in CRM-M-52970-2022 titled

7. Present petition is resisted by the counsel appearing on behalf of respondents No.2 to 4 who has submitted that the petitioner has got no locus *standi* to file the present petition as well as the application under Section 311 of Cr.P.C. He has further contended that alleged Will dated 7.10.2014 was forged by the petitioner in his favour by misusing the official power as at the relevant time the petitioner was serving as a revenue officer in the State of Punjab. He has further submitted that the petitioner is claiming himself to be testamentary legal heir of complainant-Ujaggar Singh and in this regard, the petitioner filed civil suit and the same was dismissed by the Court of Civil Judge, Senior Division, Panipat vide judgment and decree dated 24.8.2018 (Annexure R-2) and the Civil Court disbelieved Will dated 7.10.2014 propounded by the petitioner. It has been further contended that the plea taken by the complainant that respondents No.2 to 4 committed fraud by getting transferred the plot in question in the name of respondent No.3-Sarika Gupta was also brushed aside by the Civil Court while passing judgment Annexure R-2. Counsel for respondents No.2 to 4 has further contended that even the appeal filed by the petitioner being legal heir of Ujaggar Singh has also been dismissed by the first appellate Court vide judgment dated 8.11.2021 (Annexure R-3) and being not satisfied, the petitioner has filed RSA-2725-2022 wherein notice of motion has been issued vide order Annexure A-4. It has been further contended that the evidence which the petitioner intends to lead by invoking the provisions of Section 311 Cr.P.C. is not at all required for just and proper decision of the case. It is further contended that effective and proper opportunity was availed by the prosecution as well as the complainant to examine PW8-

Vikas Sodhi, Stamp Vendor and PW3-concerned official of the office of Sub Registrar-cum-Tehsildar, Panipat. It has been further contended that concerned documents were in the knowledge of the petitioner at the relevant time when the prosecution was adducing its evidence but at that time, the petitioner remained silent and the application in question was filed at a belated stage by the petitioner in order to prolong the proceedings which was already pending since 2012. Counsel for respondents No.2 to 4 has further contended that the learned trial Court rightly dismissed the application moved by the petitioner under Section 311 of Cr.P.C.. In support of his contentions, counsel for respondents No.2 to 4 has placed reliance on judgments passed by this Court in **Jaswant Rai v. State of Punjab**, 2013(1) RCR (Criminal) 256, **Baljinder Singh @ Kaka v. State of Punjab and another** 2021 Criminal Law Journal 3696 and **Rajwinder Kaur v. Davinderjit Singh and others** 2021 ACD 352.

8. I have considered the submissions made by the counsel for the parties.

9. Section 311 of Cr.P.C. is reproduced below : -

311. Power to summon material witness, or 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.

10. Hon'ble Supreme Court has time after time enunciated the ambit of section 311 of Cr.P.C. In Criminal Appeal No.1345 of 2011; **Vijay**

Kumar v. State of U.P. and another decided on 3.8.2011, Hon'ble Supreme Court observed that there is no manner of doubt that the power under Section 311 of Cr.P.C. is a vast one. This power can be exercised at any stage of the trial. Such a power should be exercised provided the evidence which may be tendered by a witness is germane to the issue involved, or if proper evidence is not adduced or relevant material is not brought on record due to any inadvertence. It hardly needs to be emphasized that such power should be exercised for just decision of the case. The wide discretion conferred on the Court under Section 311 Cr.P.C. must be exercised judiciously. Whether to exercise such power or not, would largely depend upon the facts and circumstances of each case.

11. The aforesaid view was reiterated by Hon'ble Supreme Court in Criminal Appeal No.15 of 2019 decided on 4.1.2019, **Swapan Kumar Chatterjee v. Central Bureau of Investigation** and further in **Varsha Garg's** case (supra).

12. In **Manju Devi v. State of Rajasthan**; 2019 SCC Online (SC) 552, Hon'ble Supreme Court noted that an application under Section 311 of Cr.P.C. could not be rejected on the sole ground that the case had been pending for an inordinate period of time. Hon'ble Apex Court observed that duration of a case cannot displace the basic requirements of ensuring just decision after taking all the necessary and material evidence on record.

13. In **Mina Lalitha Baruwa v. State of Orissa and others**; (2013) 16 SCC 173. Hon'ble Apex Court observed that the power conferred under Section 311 of Cr.P.C. is a power given to the Court not to be merely exercised at the bidding of anyone party/person but the power conferred and

discretion vested is to prevent any irretrievable or immeasurable damage to the cause of the society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision of the case.

14. Now adverting to the facts of the present case, it is evident that the petitioner is claiming right in the plot in question being testamentary legal heir of Ujaggar Singh who succeeded the said property on the death of his son Sethi Singh. Admittedly, the issue regarding genuineness of Will dated 7.10.2014 stated to be executed by Ujaggar Singh in favour of the petitioner is pending before High Court in RSA-2725-2022. Hon'ble Apex Court in **K. Jagadish v. Udaya Kumar G.S.**; (2020) 14 SCC 552 has observed that in such like cases, civil as well as criminal remedies co-exists. In the present case, it is not disputed that the petitioner was cited as a prosecution witness. Coordinate Bench of this Court in **Bennet Coleman's** case (supra) has clearly observed that for purpose of filing application under Section 311 Cr.P.C., it is not necessary that the applicant has to be either the complainant or victim or a listed witness. In the given circumstances, this Court is of the view that the petitioner, who is claiming right over the plot in dispute being testamentary legal heir of Ujaggar Singh has got *locus standi* to file the application under Section 311 of Cr.P.C..

15. Now it is to be seen that the evidence which the petitioner intends to adduce with the aid of Section 311 Cr.P.C. is essential and necessary and is required for just decision of the case. The case of the prosecution is that complainant-Ujaggar Singh never gave any application,

affidavit or his consent to transfer the plot in question in favour of respondent No.3-Sarika Gupta and that the concerned documents were manipulated by the accused persons. In order to prove its case, the prosecution/complainant has placed reliance upon the relevant entries of the registers of stamp vendor and SDM/Executive Magistrate, Panipat respectively. As per petitioner, the prosecution failed to properly examine PW3 and PW8 due to inadvertence, in order to bring the truth before the trial Court. This Court is of the view that PW3 and PW8 could be recalled along with concerned registers for their further examination-in-chief or re-examination by the prosecution/complainant in order to get answers of the some of the questions that left un-answered during the trial. With regard to other documents which the petitioner intends to produce by way of additional evidence, learned trial Court can take judicial notice of the concerned policy dated 1.2.2011 and instructions dated 7.9.2011 and 20.9.2011 framed/issued by HUDA and its Chief Administrator.

16. In view of above, the impugned order is set aside and the application filed by the petitioner under Section 311 of Cr.P.C. is partly allowed and the learned trial Court is directed to recall PW3 official of the office of SDM-cum-Executive Magistrate, Panipat and PW8-Vikas Sodhi, Stamp Vendor along with concerned record for their further examination-in-chief on behalf of the prosecution/complainant with liberty to the defence counsel to further cross-examine both the said witnesses to the extent of further examination-in-chief. The learned trial Court could take judicial notice of policy dated 1.2.2011 and instructions dated 7.9.2011 and 20.9.2011 at the time of passing final judgment in the case. The petitioner

could produce certified copies of sale deeds bearing Wasika No.5584 and 5606 dated 20.1.2011 which were registered in the office of Sub-Registrar, Fazilka.

17. The present petition stands disposed of in the aforesaid terms.
18. Parties are directed to appear before the learned trial Court on 26.7.2023.
19. However, nothing observed hereinabove is to be construed as expression of opinion on the merits of the main criminal case which is pending in the learned trial Court.

(KARAMJIT SINGH)
JUDGE

July 4, 2023
Paritosh Kumar

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