

CRM-M-12189-2021

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-12189-2021
Reserved on: 22.09.2023
Pronounced on :03.10.2023

Naresh Kumar

....Petitioner.

Versus

State of Haryana and others

....Respondents.

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY

Present:- Mr. G.S. Sandhu, Advocate,
for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

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SANJIV BERRY, J.

Instant petition has been preferred under Section 482 Cr. P.C. for quashing of the order dated 22.01.2020 passed by learned Additional Chief Judicial Magistrate, Karnal,(Annexure P-4), whereby the application filed under Section 311 Cr. P.C. had been partly declined.

2. In *nutshell*, the case of the petitioner is that the FIR No. 83 dated 04.02.2014 under Sections 406, 420, 467, 468, 471, 506, 120-B IPC was got registered at Police Station Sadar, Karnal, (Annexure P-1) by the petitioner on account of fraud being played by the accused by selling non-transferrable land to him on the basis of forged documents. As per the complainant- Naresh Kumar, (the present petitioner), the accused, namely

Kishore Singh, and his wife, namely Rajkumari Singh, had shown him the *jamabandi* and the *site plan* of the land and finally the deal was settled for Rs. 19,04,000/- with the accused and Rs. 12,12,000/- with his wife and the complainant paid Rs. 50,000/- each to them as earnest money and thereafter an agreement to sell dated 13.07.2012 was executed. Later, the complainant paid another sum of Rs. 1,50,000/- each to them as earnest money. The other accused also actively participated in the said transaction. Thereafter, the sale deed was executed in the office of Sub Registrar, Jabalpur. As per the petitioner, when he applied for getting the mutation entered, he was informed by the Patwari that the said land was non-transferrable and the seller had no right to get this land sold. On the basis of the complaint, the case was registered. After completion of the investigation, challan was presented in the concerned Court and the trial commenced.

3. During the course of trial, the learned Additional Chief Judicial Magistrate, Karnal, dealing with the case, closed the evidence of prosecution by order on 16.12.2019 (Annexure P-2).

4. Aggrieved by the said order (Annexure P-2), the petitioner-complainant moved an application dated 04.01.2020 (Annexure P-3) under Section 311 Cr.PC for examination of the material prosecution witnesses.

5. Learned Additional Chief Judicial Magistrate, Karnal, then dealing with the case, vide the impugned order dated 22.01.2020 (Annexure P-4) partly allowed the application thereby granting permission to the

prosecution to examine the petitioner-complainant as a witness in the case while the request for examination of the remaining witnesses was declined.

6. A revision was preferred by the petitioner in the Court of learned Additional Sessions Judge, Karnal, which, however, was dismissed vide judgment dated 11.02.2021 (Annexure P-6) and aggrieved by the same, the present petition has been preferred seeking quashing of the impugned order dated 22.01.2020 (Annexure P-4).

7. I have heard learned counsel for the petitioner as well as the learned State counsel and perused the record.

8. It is, *inter alia*, contended by the learned counsel for the petitioner that the aforesaid FIR in question (Annexure P-1) was got registered, at the instance of petitioner-complainant, as on the basis of forged and fabricated documents pertaining to the land, the accused in connivance with each other had got the said land sold to him which in fact was non-transferrable land. He further contends that after the completion of the investigation, challan was presented in the Court and trial commenced. The case was fixed for 16.12.2019 for examination of the prosecution witnesses but on that date, no witness appeared as the warrants of arrest qua witnesses: Sanjay, Dhanraj, Ashok and Mahender were received back unexecuted while the warrants of arrest regarding the witness: Sunil and ASI Shiv Charan, had not been received back nor the summons issued qua witnesses number 12 and 13 were received back, so the Learned Additional Chief Judicial Magistrate, Karnal, while passing the order dated 16.12.2019 (Annexure P-2) closed the

evidence of the prosecution by order. He further contends that the petitioner then moved an application under Section 311 Cr. P.C. for granting permission to examine the material witnesses in the case for the purpose of just decision but the learned Additional Chief Judicial Magistrate, Karnal, vide the impugned order dated 22.01.2020, partly allowed the application granting permission for examination of the petitioner-complainant only, while the request for examination of the other material witnesses was declined.

9. The learned counsel for the petitioner further contends that examination of these witnesses, mentioned in the application, is required for the just decision of the case and this aspect has not been considered by learned Additional Chief Judicial Magistrate, Karnal, while passing the impugned order (Annexure P-4) in a haste without considering that their examination was material to arrive at a just conclusion. Hence, he prayed for setting aside the said impugned order dated 22.01.2020 (Annexure P-4) and the consequent permission be granted to the prosecution for examination of the material witnesses.

10. The Learned State counsel has referred to the reply dated 30.05.2023 submitted by the Deputy Superintendent of Police, Traffic Karnal, District Karnal, to submit that out of 21 witnesses, cited by the prosecution, only 10 witnesses had been examined by the prosecution. As per the learned State counsel, the case of the prosecution depends upon the examination of the material witnesses who could not be examined due to

closing of the prosecution evidence by order by the learned trial Court and their examination was required for the trial court to arrive at a just decision in the case.

11. After considering the respective submissions and perusing the interim orders annexed with the paper book by the petitioner, it transpires that after presentation of the challan in the case, the charge was framed against the accused for having committed the offences under Sections 406, 420, 467, 468, 471, 506, 120-B IPC and out of 21 witnesses, cited by the prosecution, 10 prosecution witnesses had been examined and the case was adjourned to 16.12.2019 for prosecution evidence. The perusal of the order dated 16.12.2019 reveals that, on that date, no prosecution witness was present as the warrants of arrest issued against the Prosecution Witnesses, namely Sanjay, Dhanraj, Ashok and Mahender, were received back unexecuted whereas warrants of arrest issued against the Prosecution Witnesses namely Sunil and ASI Shiv Charan, were not received back and at the same time, summons of Prosecution Witnesses at serial number 12 and 13 were also not received back and the learned trial Court proceeded to close the evidence of the prosecution by order and adjourned the matter for 04.01.2020 for the statement of the accused under Section 313 Cr.P.C.

12. On 04.01.2020, an application under Section 311 Cr.P.C. for calling of the witnesses vide Annexure P-3 dated 04.01.2020 was filed by the petitioner- complainant, which was disposed of vide impugned order dated 22.01.2020 (Annexure P-4).

13. Before proceeding further, it would be apposite to examine Section 311 Cr.P.C., which reads as under:

‘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.’

14. A perusal of Section 311 of the Criminal Procedure Code would reveal that this provision is in two parts; First part of the Section gives discretionary powers to the Trial Court to summon any person as witness or to examine any person in attendance, though not summoned as a witness or recall and to re-examine any person already examined whereas the second Part of the Section, casts an obligation upon the Trial Court to recall any witness for examination and cross-examination if the Court finds that their testimony shall be important for the just decision of the case.

15. In the present case, as is evident from record, that after the framing of the charge, 10 witnesses out of 21 witnesses, cited by the prosecution, had already stood examined. For the fixed date i.e. 16.12.2019, the court had summoned the witnesses namely Sunil, Dhanraj, Ashok and Mahender, through warrants of arrest for that date but their warrants of arrest were received back unexecuted whereas the warrants of arrest issued against

the witnesses, namely Sunil and ASI Shiv Charan, were not received back by the Trial Court and the summons of the witnesses, cited at serial number 12 and 13 who happened to be Up- Panjiyak Officer, Jabalpur, MP, along with record and Nakal Parbhari Officer, Computer Branch Tehsil Sehpara, Jabalpur, M.P., were also not received back.

16. In this context, the learned counsel for the petitioner has referred to the judgment cited as *Harchand Singh versus State of Punjab and others, 2011(2) RCR (Criminal) 693 (P&H)* and *Om Parkash versus State of Haryana and others, 2015(3) RCR (Criminal) 557 (P&H)* to argue that it was the duty of the Court to have compelled the presence of the witnesses who did not appear despite issuance of processes of the Court rather than closing the evidence of the prosecution by order.

17. Considering the arguments in the light of the facts and circumstances of the case, I find force in the contention raised by learned counsel for the petitioner, in so far as, once the learned Trial Court had issued the processes to procure the presence of the witnesses and even through the warrants of arrest, as is evident from the order dated 16.12.2019, then if the warrants of arrest or the summons were received back unexecuted or were not received back from the police/Process serving branch, then the Trial Court should not have acted as a mute spectator and should have proceeded to compel the appearance of the witnesses, so summoned by it, so that their testimony could be recorded which was essential to the just decision of the case.

18. The non-appearance of the witnesses for want of service of summons or their non-appearance despite the service of summons shall not give any jurisdiction to the Trial Court to close the evidence of the prosecution by order. In fact the Trial Court ought to have taken the coercive action against those witnesses in order to compel their appearance in the Court against whom the court had already issued the process in the form of summons and warrants of arrest. In such a situation, it is not expected from the Trial Court to sit back with its hand folded, rather it should be conscious of the fact that it has dynamic role to play in the trial of criminal cases so as to arrive at a just conclusion. The Trial Court has been entrusted with bounden duty to dispense justice and the inefficiency on the part of officials/officers entrusted with the duty regarding the service of summons/warrants of arrest of the witnesses or the reluctance on the part of the witnesses to attend the Court should not come in the way of learned Trial Court in discharging such duty. As it is in the present case, evident from the order dated 16.12.2019, the Trial Court ought to have taken coercive steps to procure the presence of the witnesses, in accordance with the relevant provisions of the law. Learned Trial Court, instead of resorting to the coercive steps to procure the presence of the prosecution witnesses, mentioned in the order, opted to close the evidence of the prosecution by order not realizing the fact that the non-examination of the such material witnesses would affect its arriving at a just decision of the case. At the same time, the prosecuting agency and also the serving agency under the

Superintendent of Police is duty bound to produce the witnesses in time before the learned Courts so that no undue delay is caused in just conclusion of the trial and in the present case due to laxity on the part of the serving agency of the prosecution, the material witnesses of the prosecution could not be examined in time and even the processes to compel their presence in the Court including the warrants of arrest etc., had either been not got served or returned back unserved and even the witnesses who were got served for the date fixed but not appeared, no coercive steps have been taken against them by the learned Trial Court.

19. It is worth mention here that the Hon'ble Supreme Court while analyzing the provisions of Section 311 Cr.P.C, in **Godrej Pacific Tech Limited v. Computer Joint India Limited 2008 (4) Criminal Court Cases 162**, observed as under:-

'8. The object underlying Section 311 of the Code is that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case. The section is not limited only for the benefit of the accused, and it will not be an improper exercise of the powers of the court to summon a witness under the Section merely because the evidence supports the case of the prosecution and not that of the accused. The section is a general section which applies to all

proceedings, enquiries and trials under the Code and empowers the Magistrate to issue summons to any witness at any stage of such proceedings, trial or enquiry. In Section 311 the significant expression that occurs is "at any stage of any inquiry or trial or other proceeding under this Code". It is, however, to be borne in mind that whereas the section confers a very wide power on the court on summoning witnesses, the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.'

20. The power conferred under Section 311 Cr.P.C. is very wide and it confers enormous power in the court for recalling a witness or lead additional evidence in any form before delivering final judgment. This is on account of the concept of giving a person fair trial, to give due opportunity to a person and for the Court to arrive at just and fair decision. Therefore, while dealing with an application under 311 Cr.P.C., the trial court should take into consideration the essentiality of the evidence of the person who is to be examined coupled with the need for the just decision of the case to constitute the touchstone which must guide the decision of the Court.

21. Therefore, considering the peculiar facts and circumstances of the present case, this Court is of the considered view that the impugned order suffers from patent illegality which cannot be sustained, as a consequence, the impugned order dated 22.01.2020, (Annexure P-4) passed by learned Additional Chief Judicial Magistrate, Karnal, is hereby set aside

by allowing the present petition and the learned Trial court is directed to examine the remaining un-examined witnesses, as mentioned in the application dated 04.01.2020 (Annexure P-3), moved by the petitioner, in accordance with the law. Since the criminal trial in the instant case is pending for a considerable long time, the Superintendent of Police, Karnal, is also directed to ensure the due service of the processes issued by the Court by deputing some responsible officer so that the trial of the case is concluded as early as possible.

22. Resultantly, in the light of the aforesaid discussions, present petition stands allowed with no order as to cost. Any observation made herein-above shall not affect the merits of the case.

(SANJIV BERRY)
JUDGE

03.10.2023
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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |