

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-16830-2017
Decided on : 08.11.2023

Ashraf Khan

..... Petitioner

Versus

Kirpal Singh

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mohd. Arshad, Advocate
for the petitioner.

Mr. Vinay Kumar Pandey, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

The petitioner is impugning the order dated 28.02.2017 (Annexure P-3) passed by Addl. District Judge, Mewat Nuh vide which his application under Section 391 read with Section 311 Cr.PC filed in Crl. Appeal No.376 dated 24.12.2015 arising out of Crl. Complaint No.116 dated 07.12.2010 had been dismissed.

2. Learned counsel for the petitioner argued that Abdul Salam, who was supposed to testify as a defence witness (DW-2) and had also submitted a duly sworn in affidavit Ex.DW-2/A, did not appear for his cross-examination on account of some compelling reasons. Due to this, the aforementioned affidavit was not read into evidence. It has been emphasized that the testimony of DW-2 Abdul Salam would be very crucial for the case, given its

relevance to the transaction in question, and for the just adjudication of the case in hand. Learned counsel for the petitioner contends that during the trial, the complainant filed an application under Section 311 Cr.PC to allow an agreement dated 16.04.2007 to be tendered into evidence however, no opportunity was provided to the petitioner to rebut it. Aggrieved by this, the petitioner then approached this Court by way of CRM-M-19853 of 2015. The aforementioned criminal petition was dismissed by this Court with directions to trial Court to grant an opportunity to the petitioner to rebut the above-mentioned agreement. However, before the petitioner could approach the trial court for such rebuttal, the trial concluded and the petitioner was erroneously convicted. A prayer, therefore, has been made for allowing the instant petition.

3. Learned counsel appearing for the respondent while opposing the prayer and submissions made by the counsel opposite has submitted that it is a matter of record that the petitioner had been given ample opportunities to produce DW-2 Abdul Salam, however, the petitioner had failed to do so. Furthermore, learned counsel appearing for the petitioner before the trial court had himself closed the evidence on 29.01.2015 by making a statement in the said regard. Even the instant application, which has been filed by the petitioner, is completely silent as to how the evidence of DW-2 Abdul Salam would be just and necessary for the adjudication of the case in hand.

4. Heard learned counsel and perused the relevant material on record.

5. The petitioner is seeking summoning of DW-2 Abdul Salam, who submitted his affidavit Ex.DW-2/A during his examination-in-chief before the trial Court. It has been submitted that he is a crucial witness having relevant information pertaining to the transaction in question and would facilitate in the just adjudication of the case. However, it needs to be noticed that after conclusion of his examination-in-chief, his cross-examination was deferred on the request of learned counsel for the complainant on the ground that he was unwell. Subsequently, even though number of opportunities including last opportunity were granted to the accused to lead his defence evidence, however, DW-2 Abdul Salam never appeared before the trial Court again. It is worth highlighting that the counsel for the accused concluded his evidence on 29.01.2015 and that too on the statement made by the counsel representing him. It is too late in the day now, as the case is at the appellate stage, for the petitioner to wake up from his slumber and ask for yet another opportunity to lead evidence. This Court cannot be a facilitator to the dilatory tactics of the petitioner to stall the case before the Court below. Furthermore, although it has been argued that cross-examination of DW-2 Abdul Salam would be crucial for just adjudication of the case, however, application filed under Section 311 Cr.PC is completely silent regarding the additional evidence which the petitioner wishes to adduce to counter the evidence of the complainant. The application is also deficient inasmuch as it has not even disclosed the name of other witnesses, who are being sought for the proposed additional evidence or any of the documents that the petitioner

intends to adduce to refute the supplementary statement of the complainant.

6. As a sequel to the above, the present petitioner being devoid of any merit, stands dismissed.

08.11.2023
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(MANJARI NEHRU KAUL)
JUDGE

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