

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-21849 of 2023
Date of Decision: 02.05.2023.

Ashok Kumar

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Himanshu Puri, Advocate for
Mr. Sunny Kumar Singla, Advocate
for the petitioner.

Mr. M.S. Nagra, A.A.G., Punjab.

VIKRAM AGGARWAL, J. (ORAL)

1. Prayer in the present petition preferred under Section 482 of the Code of Criminal Procedure (for short the 'Cr.P.C.'), is to set aside order dated 14.03.2023 (Annexure P-3), passed by the Sub-Divisional Judicial Magistrate, Sunam, vide which the application filed by the present petitioner, under Section 311 Cr.P.C., for examining him as a witness was dismissed.

2. The facts in brief, are that FIR No.29 dated 13.03.2014 under Sections 420, 406, 447, 204, 448, 120-B of the Indian Penal Code, 1860, registered at Police Station Sadar Sunam, District Sangrur (Annexure P-1). After conclusion of investigation, final report under Section 173 Cr.P.C. was submitted on 01.04.2015 and charges were framed on 08.06.2015. An application came to be moved by the present petitioner under Section 311 Cr.P.C., on 09.02.2023 (Annexure P-2) seeking to examine the present petitioner as a witness as he was the complainant in the said case and somehow, had not been cited as a witness.

This application was dismissed by the Sub-Divisional Judicial Magistrate, Sunam,

vide order dated 14.03.2023 (Annexure P-3), leading to the filing of the present petition.

3. Notice of motion.

4. There is no requirement of issuance of notice to respondents No.2 and 3 as the decision of the present case will not affect the said respondents.

5. On the asking of the Court, Mr. M.S. Nagra, A.A.G., Punjab, accepts notice on behalf of the respondent-State.

6. I have heard learned counsel for the parties.

7. Learned counsel for the petitioner submits that the trial Court gravely erred in dismissing the application filed by the petitioner under Section 311 Cr.P.C. He submits that prosecution evidence is still going on and the next date is before the trial Court is 15.05.2023. He submits that the examination of the present petitioner as a witness is of utmost importance as he is the complainant in the present case and it was on the basis of the complaint submitted by him that the FIR was registered.

8. Learned counsel representing the State of Punjab has also not been able to controvert the submissions made by learned counsel for the petitioner, though an attempt was made stating that the case is very old and 13 witnesses out of 19 witnesses, have already been examined.

9. I have considered the submissions made by learned counsel for the parties. It is indeed shocking that the person on whose complaint the FIR was registered, i.e., the present petitioner, was not cited as a witness. The Investigating Officer did not bother to cite him as a witness. The Officer checking the final report under Section 173 Cr.P.C., also did not detect the error nor did the public prosecutor in the Court realize this fact for a period of 08 years. To top it all, the

allowing of the application would result in delay. It was also erroneously held by the trial Court that the prosecution could not be allowed to fill up the lacuna, at that stage.

10. In the considered opinion of this Court, the trial Court should have considered the matter from a different perspective and should have kept in mind that the application had been moved by none else than the complainant himself, who, somehow, though in a totally unjustified manner, was not cited as a witness. His evidence may very well be the most important evidence in the whole trial. It is expected that in future, the Court concerned will not get swayed only by the fact that a case falls within the category of action plan cases and shall take a more pragmatic view as the duty of the Courts is to administer justice. In the considered opinion of this Court, dismissal of this application amounts to denial of justice. It is also hoped and expected that in future, the investigating agencies and the prosecuting agencies will be more careful in the performance of their duties.

In view of the aforementioned facts and circumstances of the present petition is allowed. The order dated 14.03.2023 (Annexure P-3) is set aside. The application filed by the petitioner under Section 311 Cr.P.C., is allowed. The trial Court is directed to grant two effective opportunities to the petitioner for his examination. The petitioner shall appear before the trial Court on the date fixed i.e., 15.05.2023. The trial Court would be at liberty give two dates for evidence of the petitioner as per its schedule.

May 2nd, 2023
Rekha

(VIKRAM AGGARWAL)
JUDGE

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