

CRR-1682-2022

2023:PHHC:124692

-1-

202

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1682-2022

Date of Decision: 20.09.2023

KARAM SINGH

... Petitioner

Versus

MALKEET SINGH & OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Mohinder Singh Joshi, Advocate
for the petitioner.

Mr. Ashok Bhardwaj, Advocate
for respondent Nos.1 to 7.

Ms. Ramta K Chaudhary, DAG, Punjab
for respondent No.8.

JASJIT SINGH BEDI, J.

The present petition has been preferred against the order dated 01.08.2022 passed by the ACJM, Patiala whereby the application under Section 311 Cr.P.C. filed by the petitioner/complainant to examine certain witnesses has been dismissed.

2. The brief facts of the case are that the petitioner/complainant had entered into an agreement to sell with respondent No.1-Malkeet Singh to purchase land. In terms of the agreement, a sum of Rs.55,00,000/- had been paid to respondent No.1-Malkeet Singh. Along with the said amount, respondent No.1-Malkeet Singh had also received a sum of Rs.35,23,000/- out of which loans of different banks were repaid by him on the basis of the

payments made by the petitioner. In fact, respondent No.1-Malkeet Singh had deposited a sum of Rs.24,00,073/- with the State Bank of India and Bank of India which money had been paid by the petitioner.

3. As the sale deed was not got registered, an FIR No.39 dated 08.02.2012 under Sections 406 and 420 IPC came to be registered against respondent No.1-Malkeet Singh at the instance of the petitioner. The report under Section 173(2) Cr.P.C. also came to be submitted against him alone. During the course of the trial an application was moved to summon the private respondent Nos.2 to 7 as additional accused which was allowed by the Court of the JMIC, Patiala vide order dated 08.06.2015 (Annexure P-2). Against the aforementioned orders of summoning, revision petitions were preferred which came to be dismissed vide order dated 13.01.2020 (Annexure P-3) by the Court of the ADJ, Patiala. The aforementioned orders were challenged before this Court in a quashing petition bearing CRM-M-356-2016. The said petition was dismissed for non-prosecution on 07.12.2018.

On 19.01.2019 yet another petition was preferred by the private respondents against the judgment dated 08.06.2015 (Annexure P-2) whereby respondent Nos.2 to 7 had been summoned under Section 319 Cr.P.C. The said petition was filed without disclosing the factum of the earlier petitions having been filed and dismissed.

On 04.10.2019 the aforementioned revision petition preferred by the private respondents was allowed and the order of summoning them as additional accused was set aside.

On 13.01.2020 when this fraudulent act came to the notice of the Additional Public Prosecutor, he filed an application for recalling of the order dated 04.10.2019 which was allowed and the said order was recalled.

On 18.03.2020, the respondents preferred CRM-M-3375-2021 challenging the order dated 13.01.2020 wherein the proceedings were initially stayed and the said petition was finally dismissed on 21.12.2021 (Annexure P-5).

4. Thereafter, on 28.07.2022, an application was moved under Section 311 Cr.P.C. by the petitioner/complainant. It was pleaded in the said petition that certain witnesses needed to be examined as they were necessary for the proper adjudication of the case. The copy of the said application is attached as Annexure P-6 to the petition.

However, the aforementioned application came to be dismissed by holding that the prosecution had availed 30 effective opportunities to lead evidence, the application had not mentioned as to for what purpose some of the witnesses were required to be examined and further that some other witnesses mentioned in the application were already added in the list of witnesses attached with the report under Section 173 Cr.P.C.

5. The said order is under challenge in the present petition.

6. The learned counsel for the petitioner contends that a perusal of the facts mentioned hereinabove would show that it was respondent Nos.1 to 7 whose conduct has caused a delay in the conclusion of the Trial. No fault can be found with the manner in which the petitioner/complainant has pursued the instant case. The bank officials referred to in the application under Section 311 Cr.P.C. were required to be examined in order to establish

that respondent No.1-Malkeet Singh had repaid loans availed on the land in question from the money received from the petitioner. Ashok Kumar Goyal, Notary Public, District Courts/Tehsil Complex, Sangrur was required to be examined with respect to his Register containing Entry Nos.315 dated 29.07.2011 and 355 dated 01.08.2011 as regards the agreement to sell. Similarly Navdeep Gupta, Handwriting Expert was required to examine with respect to the report furnished by him in civil proceedings regarding the thumb impression of respondent No.1-Malkeet Singh over the agreement to sell and sale deed. Sinder Singh Passiana was required to be examined as he was an attesting witness to the sale deed dated 22.07.2011 and was also a witness of the SPA in favour of Jagtar Singh. As regards Vijay Kumar Bansal, Vasika Navis, Sangrur at Sr. No.V, he contends that he having already been examined as PW5 the prayer qua his examination be withdrawn. He also contends that once the relevance of the witnesses sought to be examined/re-examined under Section 311 Cr.P.C. has been established, the Court would ordinarily not shot-circuit the prosecution or the defence for that matter and the parties ought to be allowed to lead evidence in the manner that they think fit unless the evidence sought to be adduced is completely irrelevant to the controversy. In the instant case, it was not so. He, therefore, contends that the application be allowed and he be permitted to examine the witnesses in question.

7. On the other hand, the learned counsel for respondent Nos.1 to 7 contends that the present application has been moved after a considerable delay. All the witnesses sought to be examined are not relevant to the controversy at hand. The application had been filed only to fill up the lacuna

in the prosecution case. Therefore, the said application was liable to be dismissed.

8. The learned State counsel contends that if the Court comes to the conclusion that the examination of certain witnesses was essential for the just adjudication of the case, the Court could in its wisdom, allow an application under Section 311 Cr.P.C.

9. I have heard the learned counsel for the parties.

10. A perusal of the facts as enumerated above would show that the witnesses sought to be produced by virtue of the application under Section 311 Cr.P.C. are certainly germane to the controversy. Of course, the evidentiary value of the said statements would be a matter of adjudication during the course of Trial. At this stage, it cannot by any stretch of imagination be said that the evidence sought to be produced is completely non-essential. In fact, each party must be permitted to lead evidence in the matter that it best thinks fit and the Court, ordinarily, ought not to curtail the same. In the instant case, it would not be out of place to hold that the evidence sought to be adduced is essential for the just adjudication of the present case. By way of a post-script I may add that the conduct of the private respondents leaves a lot to be desired. They have repeatedly hoodwinked the Court because of their act and conduct. The FIR which was registered way back in the year 2012 has not culminated in a final judgment till date

11. In view of the aforementioned discussion, the present petition is allowed. The petitioner/complainant is permitted to lead his evidence in terms of the application (Annexure P-6). Thereafter, the Trial Court is

CRR-1682-2022

2023:PHHC:124692
-6-

directed to conclude the Trial as expeditiously as possible but in any case not later than three months from the date of the closing of the prosecution evidence.

(JASJIT SINGH BEDI)
JUDGE

20.09.2023
JITESH

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