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

265

CRR-1660-2021 (O&M)
Date of decision : 07.11.2023

Mahinder Kaur @ Mohinder Kaur

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Ashok Giri, Advocate
for the petitioner.

Mr. Kunal Vinayak, AAG, Punjab.

Mr. Gurcharan Dass, Advocate
for respondent No.2(b) & (c).

PANKAJ JAIN, J. (Oral)

1. One of the accused(s) is in revision against the order dated 01.11.2021 passed by Additional Sessions Judge, Rupnagar whereby two different applications filed on the same day i.e. 13.02.2020 were allowed by the common order. The third was dismissed.

2. Grievance is against the application for summoning following witnesses and for exhibition of documents:-

“(a). The concerned clerk from the record room to bring the file State Vs Mohinder Kaur decided on 19.7.1995 by the Court of Shri B.C.Rajput, the then ASJ, Ropar along with the statement of Mohinder Kaur recorded U/S 313 Cr.P.C on 11.7.1995; Statement of ASI Gurnam Singh PW5 and statement of DW-1 Gurbax Singh and the judgment dated 19.7.1995. It has also been

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requested to direct the said witness to bring the file State Vs Avtar Singh and Gurcharan Singh bearing FIR No.12/2000, PS Chamkaur Sahib decided on 14.10.2004 along with the statement dated 20.3.2002 and 23.5.2002 of PW-6 Mohinder Kaur.

B. Concerned MHC Chamkaur Sahib to bring the complete challan file untraced report U/S 173 Cr.P.C pertaining to FIR No.32 dated 9.7.1993 under sections 307/34 IPC, 25 of the Arms Act, 5 TADA.

C. Concerned Ahlmad form the Court of Shri Ravdeep Singh Hundal, ASJ, Ropar (the present Trial Court) to bring the inquiry file titled as Daljeet Singh Vs State decided on 14.12.2000 along with statement dated 18.11.2000 of RW-1 ASI Gurnam Singh and also to bring the file Daljeet Singh vs Kirpal Singh along with the statement dated 28.2.2011, 8.3.2011, 9.3.2011 and 14.3.2011 of DW-1 ASI Gurnam Singh. It has been submitted that all the aforesaid evidence is necessary for just decision of the case.”

3. Petitioner is facing prosecution with respect to an incident involving death of Paramjit Singh grand son of complainant Daljeet Singh alleged to have been killed in the house of the present petitioner.

4. Counsel for the petitioner submits that in view of the fact that the statements of the witnesses which were sought to be exhibited were not cited witnesses, the Court evolved a novel way of allowing the statements to be exhibited by allowing the present application more so when a particular and a specific finding was recorded by the trial Court admitting that so far as the grievance and admissibility of such evidence was concerned, the Court was still at sea. He thus submits that the order

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being beyond the procedure as contemplated under the Code cannot be allowed to sustain.

5. *Per contra*, counsel for respondent No.2-Gurcharan Dass submits that the present application and the order passed by the trial Court will have its traces in the provisions as contained in Section 230 of the Code, as the Court is well within its power to issue any process for compelling the attendance of witnesses or production of documents by resorting to the said provision.

6. I have heard counsel for the parties and have gone through the records of the case.

7. First dealing with the contention being raised by counsel for respondent No.2, it will be apt to peruse Section 230 of the Code which reads as under:-

“230. Date for prosecution evidence. If the accused refuses to plead, or does not plead, or claims to be tried or is not convicted under section 229, the Judge shall fix a date for the examination of witnesses, and may, on the application of the prosecution, issue any process for compelling the attendance of any witness or the production of any document or other thing.”

8. In the present case, in the considered opinion of this Court, Section 230 of the Code has no application. The question involved in the present revision is whether the Court ought to have allowed admission of evidence without deciding upon the relevance and admissibility thereof. Once the trial Court itself has recorded that it is not sure of the admissibility and the relevance of the evidence sought to be brought on record by the complainant, it is not possible for this Court

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to fathom as to how the application was allowed. On this short ground, this Court finds that the impugned order dated 01.11.2021 is not sustainable and thus deserves to be set aside. However, the trial Court is directed to decide the application afresh after deciding upon the relevance of the evidence sought to be brought and the admissibility thereof, in accordance with law.

9. In view of above, present petition is disposed off. Keeping in view that the matter relates to occurrence of the year 1993, this Court is quite sanguine that the trial Court shall decide upon the application within a period of one month from the date of receipt of certified copy of this order.

10. Ordered accordingly.

11. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

07.11.2023
Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No